

No. 12520

United States
Court of Appeals
for the Ninth Circuit.

FLO PARKER and ELGIN R. PARKER,
Appellants,

VS.

HARRY C. WESTOVER, Individually and as
Collector of Internal Revenue for the Sixth
District of California,
Appellee.

Transcript of Record

Appeal from the United States District Court,
Southern District of California,
Central Division.

FILED

APR 30 1950

PAUL P. O'BRIEN. CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

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Los Angeles 13, Calif.

For Appellee:

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United States Attorney,

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In the District Court of the United States for the
Southern District of California, Central Division

No. 8604-B

FLO PARKER,

Plaintiff,

vs.

HARRY C. WESTOVER, Individually and as
Collector of Internal Revenue for the 6th District of California,

Defendant.

COMPLAINT

(Refund for Overpayment of Tax.)

The complaint of the plaintiff respectfully shows to this Court and alleges as follows:

I.

That at all times herein mentioned the plaintiff was, and now is, an individual residing at 120 South Burris, Compton, California.

II.

The defendant, during all the times mentioned herein was, and now is, the duly appointed and acting Collector of Internal Revenue for the 6th District of California, with his offices at Los Angeles, California.

III.

That on or about the 15th day of March, 1945, the plaintiff duly filed with the Collector of Internal Revenue for the 6th District of California her federal income tax return for the year 1944 in accordance with the Internal Revenue Code of the United States then in effect and paid to the defendant the amounts shown below, which plaintiff believes to be the entire amount for which she was liable for income tax for the year 1944:

| | |
|--------------------------|-------------|
| April 13, 1944 | \$ 6,875.00 |
| June 9, 1944 | 6,875.00 |
| September 12, 1944 | 6,875.00 |
| January 12, 1945 | 20,651.65 |
| | <hr/> |
| | \$41,276.65 |

IV.

On or about July 9, 1947, the plaintiff received from the defendant as Collector of Internal Revenue, as aforesaid, a notice and demand for payment of an additional tax of \$55,562.19, plus interest of \$7,665.30, claimed to be due from plaintiff for her 1944 income tax.

V.

Plaintiff paid to the Collector of Internal Revenue for the 6th District of California said deficiency and interest as follows:

| <u>Date</u> | <u>Tax</u> | <u>Interest</u> | <u>Total</u> |
|-----------------------|-------------|-----------------|--------------|
| July 12, 1947 | \$27,590.01 | \$3,749.20 | \$31,339.21 |
| October 8, 1947 | 27,972.18 | 4,166.32 | 32,138.50 |
| | <hr/> | <hr/> | <hr/> |
| Totals..... | \$55,562.19 | \$7,915.52 | \$63,477.71 |

VI.

On January 23, 1948, within the statutory time therefor, plaintiff filed with the defendant, Collector of Internal Revenue for the 6th District of California, her claim for refund of 1944 federal income tax in the amount of \$55,562.19, and interest paid thereon. The ground for her claim was the same as will be hereinafter set forth in this complaint.

VII.

Neither the defendant nor the Commissioner of Internal Revenue has audited plaintiff's claim although it has been on file for more than six months.

VIII.

Plaintiff brings this action under the provisions of Section 3772 of the Internal Revenue Code.

IX.

The deficiency of \$55,562.19 was due to the erroneous inclusion by the defendant and the Commissioner of Internal Revenue in plaintiff's 1944 gross income of \$64,132.73, being one-quarter of the net income of a partnership known as Southern Heater Company. Plaintiff did not own the quarter interest in said partnership and was not taxable on the quarter interest in said partnership income but the defendant and the Commissioner of Internal Revenue erroneously included such income in plaintiff's taxable income.

X.

As of October 31, 1943, plaintiff owned a half interest in a partnership known as Southern Heater Company. Plaintiff's husband, E. R. Parker, owned the other half interest. On October 31, 1943, plaintiff gave to each of her four children a six and one-fourth per cent ($6\frac{1}{4}\%$) interest in the net assets, including good will, of the Southern Heater Company and on the same date her husband, E. R. Parker, gave a six and one-fourth per cent ($6\frac{1}{4}\%$) interest in said net assets to each of their four children. Said transfers and gifts were absolute and complete and without any conditions.

XI.

Plaintiff and her husband, E. R. Parker, filed federal and state gift tax returns in which each showed that the value given to her four children totaled \$49,492.45. Plaintiff paid to the defendant on such gifts, federal gift tax in the amount of \$243.35.

XII.

Subsequently the Commissioner of Internal Revenue determined that the transfers were complete and irrevocable and constituted taxable gifts and determined that the value of the gifts made by plaintiff to her four children aggregated \$106,250.00 and demanded additional gift taxes of \$7,774.15 from plaintiff. In arriving at the above values for gift tax purposes the Commissioner of Internal

Revenue used a salary of \$12,000.00 per year for E. R. Parker in computing the past earnings and estimating the future earnings of the business, and in determining the value of the good will of the business.

Plaintiff paid to the defendant the federal gift taxes as demanded, together with interest thereon.

XIII.

As a consequence of the transfers made by plaintiff and E. R. Parker to their four children, plaintiff owned a 25% interest in said assets and business, her husband owned a 25% interest in said assets and business, and her four children owned the other 50% in such assets and business. All six of them were tenants in common and it was necessary to have some formal organization through which the business could be carried on. Accordingly, E. R. Parker, the father of the children, filed in the Superior Court of the State of California in and for the County of Orange, in which County the parties were then living, a petition for appointment of guardian. In this proceeding, Docket No. A-11392, the Superior Court appointed Elgin R. Parker, the father, as guardian, provided he filed four corporate surety bonds of \$23,000.00 each. Such surety bonds were promised on condition that the proposed guardian obtain an order of the Court instructing the guardian to enter into a partnership agreement with the other owners of the business and instructing the guardian to keep the property of the wards

invested in the partnership interests and instructing the guardian, as partner, to retain in the partnership some of the profits of the business. Such Court authorizations were obtained and Letters of Guardianship to Elgin R. Parker were thereupon issued.

XIV.

Elgin R. Parker, individually and as the guardian, and plaintiff signed the articles of co-partnership to take effect as of November 1, 1943.

Each partner in the partnership of Southern Heater Company had an equal voice in the management of the business. Hence, the Superior Court, which appointed the guardian of the four guardianship estates, had four votes against one for plaintiff and one for plaintiff's husband and the Court had control and management of the partnership business through the instrumentality of the guardian. Since November 1, 1943, the guardian has filed annual accounts with the Court and has had the Court's approval thereon and has operated and managed the guardianship estates under the supervision and jurisdiction and under the orders of the Probate Court.

XV.

The partnership filed a certificate of fictitious firm name as required by California law and complied with other legal formalities. It has kept separate books of account, in which each partner's share of capital and income is credited to him.

XVI.

Plaintiff and her husband have continued to support their four children and none of the income of the children has been used for their support or that of the parents.

XVII.

The 1943 gifts by plaintiff and her husband to their four children of interests in the assets of the business, mentioned above, were completely valid and binding and vested in each child a $\frac{1}{8}$ interest in the assets of the business of Southern Heater Company. Said gifts are irrevocable and the income from said assets and interests of the children is not the income of plaintiff or her husband. Capital was a material income producing factor in the business of Southern Heater Company and the income from the children's portion of this capital was their own income and not the income of the parents. A salary equal to the value of the services rendered by Elgin R. Parker to the partnership has been paid and deducted before computing the distributable shares of the income of the partners.

XVIII.

Plaintiff's children were partners with plaintiff and her husband in the business known as Southern Heater Company and each partner, including the children, is taxable on his or her distributive share of the partnership income and plaintiff is not tax-

able on any of the distributable shares of the partnership income which belong to her four children.

XIX.

Plaintiff's total tax liability on her own income for the calendar year 1944 is \$40,389.25. Plaintiff has, upon the demand of the defendant, paid the defendant \$96,838.84 and has overpaid her 1944 income tax in the amount of \$56,449.59. Neither said amount nor any part thereof has been repaid to plaintiff. Plaintiff is the owner of said claim.

XX.

That by reason of the premises defendant became, and is, indebted to the plaintiff in the sum of \$56,449.59, plus interest of \$7,028.12 paid thereon, plus interest of 6% per annum on \$31,339.21 from July 12, 1947, until repaid to plaintiff, and plus interest on \$32,138.50 from October 8, 1947, until repaid to plaintiff, plus costs of this suit, together with such other relief as seems proper to the Court.

/s/ MELVIN D. WILSON,

/s/ JOSEPH D. PEELER,

Attorneys for Plaintiff.

State of California,
County of Los Angeles—ss.

Flo Parker, being duly sworn, deposes and says that she is the plaintiff in the foregoing Complaint;

that she has read the Complaint and knows the contents thereof; and that the statements contained therein are true of her own knowledge.

/s/ FLO PARKER.

Subscribed and Sworn to before me this 23rd day of August, 1948.

[Seal]: /s/ E. L. EVENSIZER,
Notary Public in and for said County and State.

My Commission Expires Nov. 6, 1950.

[Endorsed]: Filed September 1, 1948.

[Title of District Court and Cause.]

ANSWER

Comes now Harry C. Westover, individually and as Collector of Internal Revenue for the Sixth District of California, and in answer to plaintiff's complaint herein admits, denies, and alleges as follows:

I.

Admits the allegations contained in paragraph I of the complaint.

II.

Admits the allegations contained in paragraph II of the complaint.

III.

Answering paragraph III, defendant admits the allegations except that he denies that the amounts of taxes set out in said paragraph constituted plaintiff's entire tax liability for 1944.

IV.

Admits the allegations contained in paragraph IV of the complaint.

V.

Answering paragraph V, defendant admits the allegations thereof except that it is alleged that the item of \$31,339.21 was paid on July 14, 1947, and the item of \$32,138.50 was paid on September 26, 1947. instead of the dates alleged.

VI.

Answering paragraph VI, defendant admits the filing of a claim for refund on or about the date alleged, but denies the correctness, validity and legal effectiveness of each and every allegation therein, and denies that the allegations set forth in said claim are sufficient to constitute a legal and valid claim for refund.

VII.

Answering paragraph VII, defendant admits that the Commissioner of Internal Revenue has not rendered a decision on said claim prior to the insti-

tution of this suit, but denies the remaining allegations in said paragraph.

VIII.

Admits the allegations contained in paragraph VIII of the complaint.

IX.

Denies each and every allegation contained in paragraph IX thereof.

X.

Denies each and every allegation contained in paragraph X thereof.

XI.

Admits the allegations contained in paragraph XI of the complaint.

XII.

Admits the allegations contained in paragraph XII of the complaint.

XIII.

Answering paragraph XIII, defendant admits that E. R. Parker filed a petition for appointment

of a guardian as alleged; that said Parker was appointed guardian and his bonds fixed in the amounts as alleged; that the court issued orders instructing the guardian to enter into an agreement as alleged and entered the authorizations and issued the letters of guardianship as alleged. Defendant denies the remaining allegations in paragraph XIII.

XIV.

Answering paragraph XIV, defendant admits that Elgin R. Parker, individually and as guardian, together with this plaintiff, signed the articles of copartnership as alleged. The remaining allegations are denied.

XV.

Answering paragraph XV, defendant alleges that he does not have sufficient knowledge or information upon which to form a belief as to the truth of the allegations therein contained.

XVI.

Answering paragraph XVI, defendant alleges that he does not have sufficient knowledge or information upon which to form a belief as to the truth of the allegations therein contained.

XVII.

Denies each and every allegation contained in paragraph XVII thereof.

XVIII.

Denies each and every allegation contained in paragraph XVIII thereof.

XIX.

In answer to paragraph XIX, defendant admits that plaintiff has paid the amount therein alleged; that no part of said amount has been repaid to said plaintiff; and that plaintiff is the owner of said claim. Defendant denies all of the other allegations in said paragraph contained.

XX.

Denies each and every allegation contained in paragraph XX thereof.

Wherefore, defendant having fully answered the complaint prays that the complaint be dismissed with costs, and for all just and proper relief.

JAMES M. CARTER,
United States Attorney.

E. H. MITCHELL,
Assistant United States
Attorney.

EUGENE HARPOLE,
Special Attorney. Bureau of
Internal Revenue.

By /s/ E. H. MITCHELL,
Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Feb. 8, 1949.

In the District Court of the United States for the
Southern District of California, Central Di-
vision

No. 8605 B

ELGIN R. PARKER,

Plaintiff,

vs.

HARRY C. WESTOVER, Individually and as
Collector of Internal Revenue for the Sixth
District of California,

Defendant.

No. 8604 B

FLO PARKER,

Plaintiff,

vs.

HARRY C. WESTOVER, Individually and as
Collector of Internal Revenue for the Sixth
District of California,

Defendant.

DEMAND FOR TRIAL BY JURY

To Harry C. Westover, Defendant, and James M.
Carter, United States Attorney, E. H. Mitchell,
Assistant United States Attorney; Eugene Har-
pole, Special Attorney, Bureau of Internal
Revenue, Attorneys for Defendant:

You Are Hereby Notified That Trial by Jury is

demand by Elgin R. Parker and Flo Parker,
Plaintiffs in the above-entitled causes.

/s/ MELVIN D. WILSON,
Counsel for Plaintiffs.

Receipt of copy acknowledged.

[Endorsed]: Filed February 16, 1949.

In the District Court of the United States for the
Southern District of California, Central Di-
vision

No. 8605-B

ELGIN R. PARKER,

Plaintiff,

vs.

HARRY C. WESTOVER, Individually and as
Collector of Internal Revenue for the 6th Dis-
trict of California,

Defendant.

COMPLAINT

(Refund for Overpayment of Tax.)

The complaint of the plaintiff respectfully shows
to this Court and alleges as follows:

I.

That at all times herein mentioned the plaintiff

was, and now is, an individual residing at 120 South Burris, Compton, California.

II.

The defendant, during all the times mentioned herein was, and now is, the duly appointed and acting Collector of Internal Revenue for the 6th District of California, with his offices at Los Angeles, California.

III.

That on or about the 15th day of March, 1945, the plaintiff duly filed with the Collector of Internal Revenue for the 6th District of California his federal income tax return for the year 1944 in accordance with the Internal Revenue Code of the United States then in effect and paid to the defendant the amounts shown below, which plaintiff believes to be the entire amount for which he was liable for income tax for the year 1944:

| | |
|--------------------------|-------------|
| April 13, 1944 | \$ 6,875.00 |
| June 9, 1944 | 6,875.00 |
| September 12, 1944 | 6,875.00 |
| January 12, 1945 | 20,839.15 |
| | <hr/> |
| | \$41,464.15 |

IV.

On or about July 9, 1947, the plaintiff received from the defendant as Collector of Internal Revenue, as aforesaid, a notice and demand for payment of an additional tax of \$55,589.70, plus in-

terest of \$7,669.19, claimed to be due from plaintiff for his 1944 income tax.

V.

Plaintiff paid to the Collector of Internal Revenue for the 6th District of California said deficiency and interest as follows:

| <u>Date</u> | <u>Tax</u> | <u>Interest</u> | <u>Total</u> |
|-----------------------|-------------|-----------------|--------------|
| July 12, 1947 | \$27,617.52 | \$3,752.99 | \$31,370.51 |
| October 8, 1947 | 27,972.18 | 4,166.32 | 32,138.50 |
| Totals..... | \$55,589.70 | \$7,919.31 | \$63,509.01 |

VI.

On January 23, 1948, within the statutory time therefor, plaintiff filed with the defendant, Collector of Internal Revenue for the 6th District of California, his claim for refund of 1944 federal income tax in the amount of \$55,589.70, and interest paid thereon. The ground for his claim was the same as will be hereinafter set forth in this complaint.

VII.

Neither the defendant nor the Commissioner of Internal Revenue has audited plaintiff's claim although it has been on file for more than six months.

VIII.

Plaintiff brings this action under the provisions of Section 3772 of the Internal Revenue Code.

IX.

The deficiency of \$55,589.70 was due to the erroneous inclusion by the defendant and the Commissioner of Internal Revenue in plaintiff's 1944 gross income of \$64,132.74, being one-quarter of the net income of a partnership known as Southern Heater Company. Plaintiff did not own the quarter interest in said partnership and was not taxable on the quarter interest in said partnership income but the defendant and the Commissioner of Internal Revenue erroneously included such income in plaintiff's taxable income.

X.

As of October 31, 1943, plaintiff owned a half interest in a partnership known as Southern Heater Company. Plaintiff's wife, Flo Parker, owned the other half interest. On October 31, 1943, plaintiff gave to each of his four children a six and one-fourth per cent ($6\frac{1}{4}\%$) interest in the net assets, including good will, of the Southern Heater Company and on the same date his wife, Flo Parker, gave a six and one-fourth per cent ($6\frac{1}{4}\%$) interest in said net assets to each of their four children. Said transfers and gifts were absolute and complete and without any conditions.

XI.

Plaintiff and his wife, Flo Parker, filed federal and state gift tax returns in which each showed

that the value given to his four children totaled \$49,492.45. Plaintiff paid to the defendant on such gifts, federal gift tax in the amount of \$243.35.

XII.

Subsequently the Commissioner of Internal Revenue determined that the transfers were complete and irrevocable and constituted taxable gifts and determined that the value of the gifts made by plaintiff to his four children aggregated \$106,250.00 and demanded additional gift taxes of \$7,774.15 from plaintiff. In arriving at the above values for gift tax purposes the Commissioner of Internal Revenue used a salary of \$12,000.00 per year for plaintiff in computing the past earnings and estimating the future earnings of the business, and in determining the value of the good will of the business.

Plaintiff paid to the defendant the federal gift taxes as demanded, together with interest thereon.

XIII.

As a consequence of the transfers made by plaintiff and Flo Parker to their four children, plaintiff owned a 25% interest in said assets and business, his wife owned a 25% interest in said assets and business, and his four children owned the other 50% interest in said assets and business, and his four children owned the other 50% in such assets and business. All six of them were tenants in common and it was necessary to have some formal

organization through which the business could be carried on. Accordingly, plaintiff, the father of the children, filed in the Superior Court of the State of California in and for the County of Orange, in which County the parties were then living, a petition for appointment of guardian. In this proceeding, Docket No. A-11392, the Superior Court appointed plaintiff, the father, as guardian, provided he filed four corporate surety bonds of \$23,000.00 each. Such surety bonds were promised on condition that the proposed guardian obtain an order of the Court instructing the guardian to enter into a partnership agreement with the other owners of the business and instructing the guardian to keep the property of the wards invested in the partnership interests and instructing the guardian, as partner, to retain in the partnership some of the profits of the business. Such court authorizations were obtained and Letters of Guardianship to Elgin R. Parker, plaintiff, were thereupon issued.

XIV.

Plaintiff, individually and as the guardian, and plaintiff's wife, Flo Parker, signed the articles of co-partnership to take effect as of November 1, 1943.

Each partner in the partnership of Southern Heater Company had an equal voice in the management of the business. Hence, the Superior Court, which appointed the guardian of the four guardianship estates, had four votes against one for plaintiff and one for plaintiff's wife and the Court had

control and management of the partnership business through the instrumentality of the guardian. Since November 1, 1943 the guardian has filed annual accounts with the Court and has the Court's approval thereon and has operated and managed the guardianship estates under the supervision and jurisdiction and under the orders of the Probate Court.

XV.

The partnership filed a certificate of fictitious firm name as required by California law and complied with other legal formalities. It has kept separate books of account, in which each partner's share of capital and income is credited to him.

XVI.

Plaintiff and his wife have continued to support their four children and none of the income of the children has been used for their support or that of the parents.

XVII.

The 1943 gifts by plaintiff and his wife to their four children of interests in the assets of the business, mentioned above, were completely valid and binding and vested in each child a $\frac{1}{8}$ th interest in the assets of the business of Southern Heater Company. Said gifts are irrevocable and the income from said assets and interests of the children is not the income of plaintiff or his wife. Capital was a material income producing factor in the business

of Southern Heater Company and the income from the children's portion of this capital was their own income and not the income of the parents. A salary equal to the value of the services rendered by plaintiff to the partnership has been paid and deducted before computing the distributable shares of the income of the partners.

XVIII.

Plaintiff's children were partners with plaintiff and his wife in the business known as Southern Heater Company and each partner, including the children, is taxable on his or her distributive share of the partnership income and plaintiff is not taxable on any of the distributable shares of the partnership income which belong to his four children.

XIX.

Plaintiff's total tax liability on his own income for the calendar year 1944 is \$40,176.75. Plaintiff has, upon the demand of the defendant, paid the defendant \$97,053.85 and has overpaid his 1944 income tax in the amount of \$56,777.10. Neither said amount nor any part thereof has been repaid to plaintiff. Plaintiff is the owner of said claim.

XX.

That by reason of the premises defendant became, and is, indebted to the plaintiff in the sum of \$56,777.10, plus interest of \$6,631.91 paid thereon, plus interest of 6% per annum on \$31,270.51

from July 12, 1947, until repaid to plaintiff, and plus interest on \$32,138.50 from October 8, 1947, until repaid to plaintiff, plus costs of this suit, together with such other relief as seems proper to the Court.

/s/ MELVIN D. WILSON,

/s/ JOSEPH D. PEELER,

Attorneys for Plaintiff.

State of California

County of Los Angeles—ss:

Elgin R. Parker, being duly sworn, deposes and says that he is the plaintiff in the foregoing Complaint; that he has read the Complaint and knows the contents thereof; and that the statements contained therein are true of his own knowledge.

/s/ ELGIN R. PARKER.

Subscribed and Sworn to before me this 23rd day of August, 1948.

[Seal] /s/ E. L. EVENSIZER,

Notary Public, in and for said County and State.

My commission expires: Nov. 6, 1950.

[Endorsed]: Filed Sept. 1, 1948.

In the United States District Court for the Southern
District of California, Central Division.

No. 8605-B

ELGIN R. PARKER,

Plaintiff,

vs.

HARRY C. WESTOVER, individually and as Col-
lector of Internal Revenue for the 6th District
of California,

Defendant.

ANSWER

Comes now Harry C. Westover, individually and
as Collector of Internal Revenue for the Sixth Dis-
trict of California, and in answer to plaintiff's com-
plaint herein admits, denies, and alleges:

I.

Admits the allegations contained in paragraph I
of the complaint.

II.

Admits the allegations contained in paragraph II
of the complaint.

III.

Answering paragraph III, defendant admits the
allegations except that he denies that the amounts
of taxes set out in said paragraph constituted plain-
tiff's entire tax liability for 1944.

IV.

Admits the allegations contained in paragraph IV of the complaint.

V.

Answering paragraph V, defendant admits said allegations except that it is alleged that the item of \$31,370.51 was paid on July 14, 1947, and the item of \$32,138.50 was paid on September 26, 1947.

VI.

Answering paragraph VI, defendant admits the filing of a claim for refund on or about the date alleged, but denies the correctness, validity and legal effectiveness of each and every allegation therein, and denies that the allegations set forth in said claim are sufficient to constitute a legal and valid claim for refund.

VII.

Answering paragraph VII, defendant admits that the Commissioner of Internal Revenue has not rendered a decision on said claim prior to the institution of this suit, but denies the remaining allegations in said paragraph.

VIII.

Admits the allegations contained in paragraph VIII of the complaint.

IX.

Denies each and every allegation contained in paragraph IX of the complaint.

X.

Denies each and every allegation contained in paragraph X thereof.

XI.

Admits the allegations contained in paragraph XI of the complaint.

XII.

Admits the allegations contained in paragraph XII thereof.

XIII.

Answering paragraph XIII, defendant admits that plaintiff filed an application for appointment of a guardian for his minor children, as alleged; that he was appointed guardian and that his bond was fixed in the amounts as alleged. It is further admitted that the court entered authorizations as alleged and issued letters of guardianship to this plaintiff as alleged. The remaining allegations in paragraph XIII are denied.

XIV.

Answering paragraph XIV, defendant admits the signing of the articles of co-partnership as alleged,

but denies each and every other allegation set forth in said paragraph.

XV.

Answering paragraph XV, defendant alleges that he does not have sufficient knowledge or information upon which to form a belief as to the truth of the allegations therein contained.

XVI.

Answering paragraph XVI, defendant alleges that he does not have sufficient knowledge or information upon which to form a belief as to the truth of the allegations therein contained.

XVII.

Denies each and every allegation contained in paragraph XVIII thereof.

XVIII.

Denies each and every allegation contained in paragraph XVIII.

XIX.

In answer to paragraph XIX, defendant admits that plaintiff has paid the amount therein alleged; that no part of said amount has been repaid to said plaintiff; and that plaintiff is the owner of said claim. Defendant denies all of the other allegations in said paragraph contained.

XX.

Denies each and every allegation contained in paragraph XX thereof.

Wherefore, defendant having fully answered the complaint prays that the complaint be dismissed with costs, and for all just and proper relief.

JAMES M. CARTER,
United States Attorney.

E. H. MITCHELL,
Assistant United States
Attorney.

EUGENE HARPOLE,
Special Attorney, Bureau of
Internal Revenue.

By /s/ E. H. MITCHELL,
Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed Feb. 8, 1949.

[Title of District Court and Causes.]

No. 8605 B and No. 8604 B.

STIPULATION FOR CONSOLIDATION

The above-entitled parties, through their common counsel, Melvin D. Wilson, Eeq., for the plaintiffs, and James M. Carter, United States Attorney, E.

H. Mitchell, Assistant United States Attorney,
Eugene Harpole, Special Attorney, Bureau of Internal Revenue, for the defendant, hereby stipulate that the above-entitled causes may be tried together and the evidence introduced in one case may be fully considered in the other case, and that there be but one jury, if the case is tried before a jury.

/s/ MELVIN D. WILSON,
Counsel for Plaintiffs.

JAMES M. CARTER,
United States Attorney.

E. H. MITCHELL,
Assistant United States
Attorney.

EUGENE HARPOLE,
Special Attorney, Bureau of
Internal Revenue.

By /s/ E. H. MITCHELL,
Counsel for Defendant.

It is so ordered. February 26, 1949.

/s/ C. E. BEAUMONT,
Judge.

[Endorsed]: Filed February 28, 1949.

[Title of District Court and Causes.]

APPELLANTS' REQUESTED
INSTRUCTIONS.

No. 24.

One of the elements that you may consider in determining the validity of this partnership is the capital that was put into the business. You may consider the source of the capital of the partners and the fact that the capital of the children was given to them by their parents. A parent can make a gift of property to his children, which is valid under the laws of California, and an outright gift carries with it the absolute parting with the control and dominion of the thing that is given, so that the donee or the party receiving the gift is absolutely free of his own will to do whatever the donee might desire to do with the property. You may consider whether the gifts in this case were absolute or subject to some condition or control by the parents.

The fact that the children's share of the partnership was given to them by their parents would not prevent the partnership from being valid for income tax purposes, if the gift were complete and the partners really intended to form a genuine partnership.

Thomas vs. Feldman, 158 Fed. (2d) 488.

Armstrong vs. Commissioner, 143 Fed. (2d)
700.

No. A.

It is the law that the donee of an intra-family gift

can become a partner for Federal income tax purposes through investment of the capital in the family partnership.

Commissioner vs. Culbertson, 69 Supreme Court, 1210.

No. C.

You are instructed that if you believe from a preponderance of the evidence that the plaintiffs here gave interests in the business assets to their children, absolutely and unconditionally, and that thereafter the parents' economic situation was reduced by the capital they gave the children, and the income therefrom, and that the parents intended in good faith to have a bona fide partnership between themselves and the children for the operation of the business, then your verdict shall be for the plaintiffs.

Commissioner vs. Culbertson, 69 Supreme Court, 1210.

No. L.

The fact that transfers to members of the family group may be mere camouflage does not, however, mean that they invariably are. If the donee of property invests it in the family partnership and exercises dominion and control over that property—and through that control influences the conduct of the partnership and the disposition of its income—he may well be a true partner. Whether he is free to, and does, enjoy the fruits of the partnership is

strongly indicative of the reality of his participation in the enterprise.

Commissioner vs. Culbertson, 69 Supreme Court, 1210.

[Endorsed]: Filed April 10, 1950.

[Title of District Court and Causes.]

DEFENDANT'S REQUESTED
INSTRUCTION.

XXXI

You are instructed that common understanding and experience are the touchstones for the interpretation of the revenue laws. The dominant purpose of the revenue laws is the taxation of income to those who earn or otherwise create the right to receive it and enjoy the benefit of it when paid. The one who earns income but gives the right to receive that income to a favorite child has enjoyed the benefit of that income within the meaning of the Internal Revenue Laws.

Helvering v. Horst (1940) 311 U.S. 112;
Section 22(a) of the Internal Revenue Code.

Respectfully submitted,

ERNEST A. TOLIN,

United States Attorney.

E. H. MITCHELL and
EDWARD R. McHALE,
Assistant United States
Attorneys.

EUGENE HARPOLE and
JAMES D. PETTUS,
Special Attorneys, Bureau of
Internal Revenue.

By /s/ EUGENE HARPOLE,
Attorneys for Defendant.

[Endorsed]: Filed April 10, 1950.

[Title of District Court and Causes.]

VERDICT OF THE JURY

Nos. 8604-BH and 8605-BH

We, the Jury in the above-entitled causes, find in favor of the Defendant, Harry C. Westover, Individually and as Collector of Internal Revenue for the Sixth District of California, in each cause.

Dated: Los Angeles, California, January 11, 1950.

/s/ E. RICHARD WEST,
Foreman of the Jury.

[Endorsed]: Filed January 11, 1950.

In the United States District Court, Southern
District of California, Central Division

No. 8605-BH

ELGIN R. PARKER,

Plaintiff,

vs.

HARRY C. WESTOVER, Individually and as
Collector of Internal Revenue for the Sixth
District of California,

Defendants.

JUDGMENT ON THE VERDICT

The above-entitled action was consolidated for trial with the case of "Flo Parker, Plaintiff, vs. Harry C. Westover, Individually and as Collector of Internal Revenue for the Sixth District of California, Defendant, No. 8604-BH," and came for trial before the Court sitting with a jury at Los Angeles, California, on January 10, 1950. The Plaintiff was represented by his counsel Melvin D. Wilson, and the defendant by his attorneys Ernest A. Tolin, United States Attorney for the Southern District of California; E. H. Mitchell and Edward R. McHale, Assistant United States Attorneys for said District; James P. Garland, Special Assistant to the Attorney General, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue. A jury of twelve was selected and sworn to try the cause. Evidence both oral and documentary was introduced

and the cause argued by counsel for the respective parties; the jury was instructed by the Court as to the law of the case; the jury thereupon retired and after deliberation returned the following Verdict:

“Verdict of the Jury

“We, the Jury in the above-entitled causes, find in favor of the Defendant, Harry C. Westover, Individually and as Collector of Internal Revenue for the Sixth District of California, in each cause.

“Dated: Los Angeles, California, January 11, 1950.

E. RICHARD WEST,
Foreman of the Jury.”

Now, Therefore, It is Hereby Ordered, Adjudged and Decreed:

That the defendant, in accordance with the Verdict of the Jury, have and is hereby given judgment against the plaintiff, Elgin R. Parker, for defendant's costs in this action to be taxed by the Clerk in the sum of \$20.00.

Dated: This 12 day of January, 1950.

/s/ BEN HARRISON,
United States District Judge.

Approved as to form:

/s/ MELVIN D. WILSON,
Attorney for Plaintiff.

[Endorsed]: Filed and entered January 12, 1950.

In the United States District Court, Southern
District of California, Central Division

No. 8604-BH

FLO PARKER,

Plaintiff,

vs.

HARRY C. WESTOVER, Individually and as
Collector of Internal Revenue for the Sixth
District of California,

Defendant.

JUDGMENT ON THE VERDICT

The above-entitled action was consolidated for trial with the case of "Elgin R. Parker, Plaintiff, vs. Harry C. Westover, Individually and as Collector of Internal Revenue for the Sixth District of California, Defendant, No. 8605-BH," and came for trial before the Court sitting with a jury at Los Angeles, California, on January 10, 1950. The Plaintiff was represented by her counsel Melvin D. Wilson, and the defendant by his attorneys Ernest A. Tolin, United States Attorney for the Southern District of California; E. H. Mitchell and Edward R. McHale, Assistant United States Attorneys for said District; James P. Garland, Special Assistant to the Attorney General, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue. A jury of twelve was selected and sworn to try the cause. Evidence both oral and documentary was introduced

and the cause argued by counsel for the respective parties; the jury was instructed by the Court as to the law of the case; the jury thereupon retired and after deliberation returned the following Verdict:

“Verdict of the Jury

“We, the Jury in the above-entitled causes, find in favor of the Defendant, Harry C. Westover, Individually and as Collector of Internal Revenue for the Sixth District of California, in each cause.

“Dated: Los Angeles, California, January 11, 1950.

E. RICHARD WEST,
Foreman of the Jury.”

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

That the defendant, in accordance with the Verdict of the Jury, have and is hereby given judgment against the plaintiff, Flo Parker, for defendant's costs in this action to be taxed by the Clerk in the sum of \$20.00.

Dated: This 12 day of January, 1950.

/s/ BEN HARRISON,
United States District Judge.

Approved as to form:

/s/ MELVIN D. WILSON,
Attorney for Plaintiff.

[Endorsed]: Filed and entered January 12, 1950.

United States District Court, Southern District of
California, Central Division

Melvin D. Wilson, Esq.,
819 Title Insurance Bldg.,
Los Angeles 13, Calif.

E. H. Mitchell, Esq.,
600 Federal Bldg.,
Los Angeles 12, Calif.

Re: Parker v. Westover, etc. No. 8604-BH.
and
Parker v. Westover, etc. No. 8605-BH.

NOTICE BY CLERK OF ENTRY OF
JUDGMENT

You are hereby notified that Judgments have been
entered this day in the above-entitled cases in Judg-
ment Book No. 63, pages 187 and 189 respectively.

Dated: Los Angeles, California, January 12,
1950.

EDMUND L. SMITH,
Clerk.

By /s/ C. A. SIMMONS,
Deputy Clerk.

[Title of District Court and Causes.]

No. 8604-BH and No. 8605-BH

NOTICE OF APPEAL

Notice is hereby given that Elgin R. Parker and Flo Parker, Plaintiffs, above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgments entered in these actions on January 12, 1950.

MELVIN S. WILSON,
Attorney for Appellants, Elgin R. Parker and Flo
Parker.

[Endorsed]: Filed February 9, 1950.

[Title of District Court and Causes.]

No. 8604-BH and No. 8605-BH

CONDITIONS OF CASH BOND

State of California,
County of Los Angeles—ss.

Melvin D. Wilson, being duly sworn deposes and says:

That he is the attorney for the plaintiffs, Elgin R. Parker and Flo Parker in the above-entitled matters.

That the cash bond of \$250.00 deposited herewith

is the property of the plaintiffs, Elgin R. Parker and Flo Parker.

That said cash bond of \$250.00 is deposited herewith as required by law and the rules of the Court, and is subject to the provisions of the Local Rule 8-C of the District Court of the United States for the Southern District of California, Central Division.

In other words, if the plaintiffs do not, in this case, pay the cost on appeal as provided by law, then the Court or the Clerk hereof, may in accordance with the provisions of Local Rule 8-C proceed against the plaintiffs and said cash bond in accordance with their obligations and may award execution thereon.

On the other hand, if the plaintiffs pay the cost of the appeal, then said cash bond is to be returned to the plaintiffs, also in accordance with the rules of the Court.

/s/ MELVIN D. WILSON.

Subscribed and sworn to before me this 9th day of February, 1950.

[Seal]: /s/ GRACE M. WHEELER,
Notary Public in and for said County and State.
My Commission Expires July 15, 1952.

The above cash bond has been examined and is recommended for approval as provided in Rule 8.

/s/ MELVIN D. WILSON,
Attorney for Plaintiffs.

[Endorsed]: Filed February 9, 1950.

[Title of District Court and Causes.]

No. 8605-BH Civil and No. 8604-BH Civil

STATEMENT OF POINTS RELIED ON

Now comes the plaintiffs in the above-entitled cases and file the following Statement of Points to Be Relied Upon in the appeal of the above-entitled causes and from the final judgments made by this Honorable Court on the 11th day of January, 1950.

1. The Court erred in failing to give the plaintiffs' requested instructions Nos. 24, A, C, L, and plaintiffs took exception thereto.

2. The Court erred in giving defendant's requested instruction, No. 31, over the objection and exception of the plaintiffs.

3. The Court erred in admitting, over plaintiffs' objection, Memorandum in re Incidence of Federal Tax Liability on 1944 Partnership Income.

4. The Court erred in admitting, over plaintiffs' objection, Application for Authority to Compromise Claims (6 pages) (Filed August 27, 1946).

5. The evidence is insufficient to justify the verdicts of the jury.

Wherefore, the plaintiffs pray that said Judgments on the verdicts be reversed, and that the United States District Court for the Southern District of California, Central Division, be ordered

to enter a decree reversing the decisions in said causes.

/s/ MELVIN D. WILSON,
Attorney for Plaintiffs.

Receipt of copy acknowledged.

[Endorsed]: Filed March 28, 1950.

[Title of District Court and Causes.]

No. 8605-BH Civil and No. 8604-BH Civil

DESIGNATION OF PORTIONS OF
RECORD ON APPEAL

To the Clerk of the United States District Court
in and for the Southern District of California,
Central Division:

Please issue a certified Transcript of Record in
the above-entitled cases on appeal to the Court
of Appeals for the Ninth Circuit, consisting of the
following:

1. Complaints.
2. Answers to Complaints.
3. Demands for Jury Trials.
4. Stipulation for the Consolidation of Cases
for Trial.
5. Statement of the Evidence.
6. The Judge's Instructions to the Jury.

7. Plaintiff's Requested Instructions Nos. 24, No. A, No. C, No. L.

8. Defendant's Requested Instruction, No. 31.

9. Exceptions to the Judge's Instructions.

10. The Verdicts of the Jury.

11. The Judgments Appealed From.

12. Notice by Clerk of Entry of Judgments.

13. Notices of Appeal with dates of filing.

14. The Designation as to Matters to be included in the record.

15. Designation of Points on which Appellants Intend to Rely.

16. Cost Bond.

Dated this 27th day of March, 1950.

/s/ MELVIN D. WILSON,
Attorney for Appellants.

To Ernest A. Tolin, United States Attorney; E. H. Mitchell and Eugene Harpole, Special Attorneys, Bureau of Internal Revenue; James Garland, Special Assistant to the Attorney General:

Please take notice that the foregoing Designation of Portions of Record on Appeal is being filed forthwith in the above-entitled case.

/s/ MELVIN D. WILSON,
Counsel for Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed March 28, 1950.

[Title of District Court and Causes.]

No. 8604-BH and No. 8605-BH

DEFENDANT - APPELLEE'S DESIGNATION
OF ADDITIONAL PORTIONS OF REC-
ORD ON APPEAL

Defendant-Appellee requests that the following additional portions of the trial evidence in above cases be incorporated in the record on appeal, to wit:

1. The reporter's transcript of proceedings of January 10 and January 11, 1950.

2. Defendant's Exhibits A, B, C and D.

Dated April 6, 1950.

ERNEST A. TOLIN,
United States Attorney.

E. H. MITCHELL and
EDWARD R. McHALE,
Assistant United States
Attorneys.

EUGENE HARPOLE,
Special Attorney, Bureau of
Internal Revenue.

By /s/ E. H. MITCHELL,
Attorneys for Defendant-
Appellee.

[Endorsed]: Filed April 6, 1950.

[Title of District Court and Causes.]

No. 8605-BH Civil and No. 8604-BH Civil

STATEMENT OF EVIDENCE

Condensation of the Oral Testimony Given
at the Trial

ELGIN R. PARKER

called as a witness on behalf of the plaintiffs being
first duly sworn testified as follows:

Direct Examination

My name is Elgin R. Parker. I am one of the
plaintiffs in this case.

I graduated from grammar school in Los Angeles. I started to work when I was 13. I went into business for myself when I was 16 and I have been in business for myself ever since. I have worked for corporations on and off. I have been in partnerships. In 1936 I went into bankruptcy. This was due mostly to real estate investments, foreclosures and deficiency judgments.

At the time I went into bankruptcy I was working for a water heating concern. I kept on working for them. I saved my salary and received a gift from my brother-in-law and sister and these helped me to make some investments from all of which I went into business for myself.

My children's names and birth dates are as follows: Dian, 1920; Patricia, 1932; Rowland, 1937;

(Testimony of Elgin R. Parker.)

Arthur, 1940, and I have another daughter who was born in 1945.

My wife has never worked in or for any company that I have been associated with, nor has she worked outside of our home or business.

In 1942 I entered into a written partnership agreement with my wife in which our interests were equal. I took a salary of \$12,000.00 a year from that firm. My wife did not work in that partnership nor did she sign checks for the partnership. That firm was dissolved in November of 1943.

I made a gift to each of my four children who were living on October 31, 1943, of a sixth and a quarter per cent ($6\frac{1}{4}\%$) interest in the assets that were being used in the business operated on that date by my wife and myself in partnership. My wife made a similar gift to each of the four children. Our purpose in making these gifts was to try to tie the children into the business for the purpose of interesting them in the business and keeping the family together. We had business reverses before and we wanted them to have some assets of their own.

After making the gifts, I applied to the Superior Court of the County in which we were living for appointment as guardian of the properties of my children so that the children would have some one to look after the assets under the supervision of the Court.

The Surety Company whom I approached to go

(Testimony of Elgin R. Parker.)

on the Guardian Bond required that I get orders from the Court to invest the children's property in a business and to enter into a written partnership agreement with the other owners of the business and retain some of the earnings in the business.

The gifts my wife and I made to the children were irrevocable and unconditional. We asked the Court's approval to keep the children's assets in the business and partnership but the Court could have done as it pleased with it.

When the partnership was dissolved I published a notice of dissolution in the paper.

Neither my wife nor I filed claims for refund for the gift tax.

Since October, 1943, I have supported my children out of the assets and income belonging to myself and wife.

The guardianships have not sold any property to me as an individual nor have the guardianships suffered any losses. The guardianships have expended money for income taxes and premium on bonds, and attorneys' fees.

The summary of capital accounts of the partnership taken from the books of the partnership for the period November 1, 1943, to October 31, 1948, shows the children's share of the capital and income of the business during that period and the disbursements charged against their shares. The withdrawals shown were paid out in cash.

(Testimony of Elgin R. Parker.)

When the partnership was dissolved and terminated on October 31, 1943, the assets were distributed and each of the four guardianships received assets which cost \$84,589.91. In addition each guardianship received \$3750.00 in Government bonds.

The income of the partnership for 1944, after paying my salary of \$12,000.00, was approximately \$252,000.00. My wife and I were entitled to fifty per cent or \$126,000.00 plus our \$12,000.00 salary making our total share of the income \$138,000.00. After the Commissioner of Internal Revenue disregarded the children as partners, he wanted a total tax from my wife and myself of \$193,00.00. This was \$55,000.00 more than my wife and myself had a right to receive from the partnership for 1944. The children's share of the partnership income for that year was \$126,000.00 and under the Commissioner's contention that would be free from income tax.

As a result of the above situation, I filed an application to the Superior Court to adjust the taxes or to adjust the partnership income. The Court made an order for authority to compromise claims which is admitted in this case as Exhibit No. 16.

When we made the gifts and formed the partnership, we thought the children would be taxable on their share of the partnership income and, of course, they would keep the balance of the income after taxes. When the Commissioner ruled that the children were not taxable and gave them refunds, my wife and I thought that we ought to be

(Testimony of Elgin R. Parker.)

permitted to get the refunds to help us pay our additional taxes and that was the basis of our petition to the Superior Court.

The factors that contributed toward the production of the income of the Southern Heater Company for the year ending October 31, were the plant, capital and a going organization and the ability or good luck in getting allocation of materials to manufacture water heaters and, of course, labor and management.

On October 31, 1943, our business was being run on a three months basis. When an allocation for material was received, I could set up a program for three months. Beyond that I couldn't figure anything. It made it uncertain as to whether we could stay in the water heater manufacturing business as water heaters weren't considered essential and we might not get further allocations of material. Under these facts I did not know whether we would make a profit or not.

The salary of \$12,000.00 per year for my services fixed in the partnership agreement dated November 1, 1943, was arrived at after checking with various officials of different companies on what they were receiving for like work and taking into consideration the fact that I was getting \$12,000.00 a year from the previous partnership with my wife; the fact that I have never received a salary in excess of that from any employer. Furthermore, this salary of \$12,000.00 per year was about twice as much as I paid any of the other executives of the

(Testimony of Elgin R. Parker.)

company. Also I checked with our auditor who had access to other concerns and he thought that \$12,000.00 would be a reasonable salary for my services. I thought it would be a reasonable salary and still think so and I intended to take a full and adequate salary for my services rendered to the partnership.

I intended to enter into a bona fide genuine partnership between my wife and children when I made the gifts to the children and entered into the partnership with them and my wife. I intended in good faith to conduct the business of Southern Heater Company in partnership with my wife and children.

After the partnership was formed and I was appointed guardian by the Court, I continued to direct the business as a practical matter, but in fact I applied to the Court for instruction whenever any step involved considerable hazard or considerable money. For instance, I went to the Court for instructions and approval when I wanted to put some of the partnership assets into corporations and obtained the Court's approval therefor.

After my wife and I gave a half interest in the assets and business to our children, the income of my wife and myself was cut in half and, of course, our ownership in the assets was cut in half. Our living expenses went on as before except that my wife and I paid for them out of our half of the income.

(Testimony of Elgin R. Parker.)

Cross-Examination

Questions by Mr. James P. Garland, Special Assistant to the Attorney General.

The books and records of the partnership are in Court.

The net income of our business prior to forming the partnership with the children on November 1, 1943, was approximately as follows: 1940, \$22,500.00; 1941, \$60,000.00; 1942, \$93,000.00; for the period from January 1, 1943, to October 31, 1943, approximately \$140,160.00.

The partnership returns for the partnership formed on November 1, 1943, with my wife and children shows net income as follows: 1944, \$260,576.89; 1945, \$231,137.16; 1946, \$306,050.28.

The income tax returns covering these businesses was prepared by Meyer Pritkin & Company.

While the income from the business owned by my wife and myself increased and the income taxes thereon increased, I did not become concerned about it. My tax auditor did not suggest that I arrange a family partnership to divide the income for income tax purposes. I wanted to make the gifts to the children and set up a separate estate for them. I had been thinking about it for a long time but I had put it off. I know that any business is hazardous but I wanted to set up an interest for the children, to have some impartial observer pass on it, and hope that they would have something, regardless of what eventually happened to the business

(Testimony of Elgin R. Parker.)

itself. I hoped that the business would earn and the children could withdraw some of the earnings and would have those separate and apart even though the business might fail and they would lose the rest of the assets.

There were no withdrawals by the children or the guardianship from the partnership in 1944, except for income taxes. There were withdrawals for each guardianship in 1945 of \$3750.00 which were put into Government bonds.

I realize that my wife and I are each suing the Federal Government for approximately \$50,000.00 for 1944 and approximately the same amounts will be involved for 1945 and 1946.

I realize that the business had substantial income for 1942 and that the income tax on that income was also substantial. When we made the gifts to the children we hoped that we would not have to go out of business. We hoped that the children would be permitted to become partners and that the business would continue to earn. We hoped that it would have a profit thereafter. Our purpose in making the gifts and forming a partnership was to give security to our children regardless of our own fortune.

My tax counsel did not advise me to arrange this family partnership. He said that if a family partnership was set up and done legally, all the partners would pay the tax on their own income. I talked to him about this before the partnership

(Testimony of Elgin R. Parker.)

was arranged. He said there was a possibility of saving income taxes. I talked to him for the first time after I had decided to make the gifts and form the family partnership. I wanted my children in the business with me regardless of their age. My children did not have any outside capital. We intended to give them the capital so they could get into the business. They did not have any outside assets which could be put into use by the partnership for the purpose of credit. My young children did not contribute any service. These factors were true with respect to all my children at that time.

Eventually the partnership was dissolved and the assets distributed and each partner or guardianship received assets which cost approximately \$84,000.00, plus the \$3,750.00 bonds each guardianship already owned.

My wife and I have filed claims against the guardianship estates to be allowed a credit of \$111,151.89 against the guardianship estates on account of 1944 income taxes. The Commissioner of Internal Revenue made refunds to the four children for 1944 of approximately \$55,000.00. By approval of the Probate Court my wife and I used those refunds to help pay our deficiencies for 1944. We have asked the Superior Court, in the event we lose this income tax case, to reallocate the income between the children and ourselves to us to distribute the income tax burden in proportion to the distribution of the income.

(Testimony of Elgin R. Parker.)

The Superior Court would not grant the request but did hold it in abeyance.

Mr. Garland: May I now offer it in evidence, the certification of some twenty-eight documents listed on the first page, being authenticated, and is substantially the entire file, as I understand, at least part of the file of the guardianship estates. I will introduce all these papers.

The Court: Any objection?

Mr. Wilson: I object to the one that he has been discussing, because it has a statement by Mr. Parker as to the status of the law on family partnerships, which is a matter of opinion and could not be taken as an admission of any kind by him. And also the same objection is made to the memorandum signed by myself. It states matters of opinion.

Mr. Garland: I have made my offer.

Mr. Wilson: To the rest of them I have no objection.

The Court: They will be introduced.

The Clerk: Defendant's Exhibit A in evidence.

(The documents referred to were marked Defendant's Exhibit A and were received in evidence.)

The Memorandum in re Incidence of Federal Income Taxation on Partnership Income signed by Melvin D. Wilson does not bear my signature. I authorized him to file papers on my behalf in the guardianship matter.

(Testimony of Elgin R. Parker.)

Mr. Garland: This memorandum is on page 2 of the Memorandum in re Incidence of Federal Income Tax Liability on 1944 partnership income: "The father received a salary of but \$12,000.00, whereas his services were worth at least \$52,000.00 per year. If a fair and full salary of \$52,000.00 per year had been paid the father, a result more comparable to that shown in situation C would have obtained.

"The parents furnished all of the capital, do all the work and support the children, so should be taken care of first."

In the Application for Instructions on Investments of Funds of the Ward which I signed under oath, I was referring to the income taxes of myself and wife when I said:

"It is to the best interests of the said guardianship estate, from the standpoint of participating in the earnings of a going business, and from the standpoint of income and estate taxes, that a guardian enter into a partnership agreement and continue to own an interest in the Southern Heater Heater Company."

As guardian, I signed the acceptance of proposed over-assessment, wherein the Commissioner granted over-assessments to each of my four children for 1944. I signed these April 30, 1947, and used the refunds amounting to approximately \$13,986.09 apiece from each of my children to help my wife and myself pay our additional taxes for 1944. We did this with the Court's approval.

(Testimony of Elgin R. Parker.)

When we made the gifts to our children, we hoped that the business would not have to be liquidated but with the gifts to the children, the control of the business passed from us to the Probate Court. Such a liquidation would have resulted in a loss to us, the children and everybody. We wanted them to have an interest in a going business.

A girl child was born to my wife and myself in 1945, two years after the partnership was formed. At the time of the birth of that child my wife and I had a fifty per cent interest in the business. We did not give her an interest in the business because of this tax litigation but we prepared an interest for her in our wills.

Redirect Examination

When we formed the partnership with the children, we expected to distribute earnings as fast as we could. The business grew so fast that it took all of its capital to carry it on and, therefore, we could not make greater distributions.

Before talking with anyone, my wife and I decided we wanted a partnership. We asked our auditor what he knew about the details of it. He advised us to take it up with counsel, which we did. Counsel told us that if properly drawn, he thought such a partnership would stand on its own feet if we would make irrevocable gifts so we couldn't get them back and that the children would

(Testimony of Elgin R. Parker.)

have an interest in the assets we gave them. We had made up our minds to make the gifts to the children and form the family partnership before we consulted our C.P.A. or tax counsel.

After discussion with the accountant and the counsel, we went ahead with the original plan of making the gifts and forming the family partnership.

I never told my counsel that my services were worth \$52,000.00 a year. I thought it was very complimentary. I did not see that memorandum before he filed it. I do not believe my services were worth \$52,000.00 in the year 1944.

Recross-Examination

My wife and I made up our minds to make the gifts and set up a family partnership before we talked to our tax counsel or auditor about the tax consequences of this transaction. The conversation with our auditor and counsel was before the gifts were made and before the partnership agreement was entered into.

After my attorney filed the Memorandum in re Incidence of Federal Income Taxation on Partnership Income for 1944, he sent me a copy later. I did not go to the State Court and disaffirm that.

Redirect Examination

Before we consulted our accountant or attorney, I realized that the gift and partnership should save family income taxes.

ELEANOR FLO PARKER

called as a witness by and on behalf of the plaintiffs, being first duly sworn was examined and testified as follows:

My name is Eleanor Flo Parker. I am one of the plaintiffs in this case.

My husband, Elgin R. Parker, suggested to me that we make gifts to the children; that we would probably have to form a partnership.

We felt that we would like security for the children and wanted them as partners in the business and wanted to build up an estate for them and perhaps tie them into the business as we wanted them to carry it on.

I did not realize that this gift, this arrangement, might save income taxes. That was not brought up in my discussion with my husband. I did not seek counsel before we made up our minds to make the gifts and form the partnership.

I have never performed any services for the partnership that was formed in November, 1943. I have never signed checks for the partnership. I never performed any services for the previous partnership between my husband and myself. I never signed any checks for that partnership. I have never brought any money into the family or into this business that came from gifts or inheritance. I have never worked outside of the family or earned any money since I have been married. I did not have any money or property when I was married.

The Government has recognized me as a partner in this partnership.

(Testimony of Eleanor Flo Parker.)

Cross-Examination

The income from the business was community income from community property and was divisible between my husband and myself for income tax purposes.

My husband and myself paid substantial income taxes for 1942 and for 1943. My husband drew the checks in payment of these taxes and took care of the business. I presume I knew that the taxes were substantial in amount.

I had not given any thought to the possibility that to divide the income between my husband and myself and the four children would reduce the amount of tax each of us would have to pay.

I never suggested or insisted that any of the children's distributable shares of the income for 1943, 1944, 1945 or 1946 should be distributed and put in their guardianship accounts. Part of the income was distributed and invested in Government Bonds for the children, \$3,750.00 each.

I was busy at home and my husband took care of the business. I signed whatever papers he had prepared for me to sign.

I did have a half interest in the business and I gave an interest to the children and I did not know that I would save income taxes by doing it.

CAPITOLA FIERKE

called as a witness by and on behalf of the plaintiffs being first duly sworn was examined and testified as follows:

My name is Capitola Fierke. I was Office Manager for the Southern Heater Company. I have been associated with Mr. Parker since 1936 in his various enterprises and in 1944 was Office Manager for the Southern Heater Company, the partnership that is in controversy.

I had charge of the books of the partnership. A new set of books was set up for it. The capital interests and the income of each partner was credited to their accounts on the books. All the accounting for the partnership was under my charge.

Mr. Parker and the auditors told me that the children had become partners at the time we set up the books for the new partnership.

Mrs. Parker may have talked to me a little bit about it later on. Mrs. Parker is not very active in the business.

MEYER PRITKIN

called as a witness by and on behalf of the plaintiffs being first duly sworn was examined and testified as follows:

My name is Meyer Pritkin. I am a Certified Public Accountant authorized to practice as such under the laws of California.

I have known Elgin R. Parker for approximately

(Testimony of Meyer Pritkin.)

18 or 20 years. I have done work for him throughout that period of time. I was the outside auditor or C.P.A. for the partnership consisting of Mr. and Mrs. Parker in the year 1943.

Mr. Parker spoke to me about giving to his children interests in the business and bringing them in as partners. I discussed this with him on one of my visits to his office and asked him the reason for wanting to do this. Among other things, he mentioned the fact that he felt that having gone beyond the period where he had financial reverses and that the business had reached a point of maturity so far as capital was concerned, he felt he would like to set up something for the children in the way of building a future interest for them and developing a future interest in the business and it was by way of them participating at a later date.

I sensed that the procedures to carry this out would be technical and that he should consult legal counsel in order that the matter would be handled in a proper manner.

I suggested to him that a gift to the children in the formation of a partnership with them as partners would reduce the family income taxes. I told him that the gifts would be irrevocable and the children would own the assets but the parents might still be taxable on the children's income and that would present some complications. Therefore, I advised him to consult an attorney.

Mr. Parker asked me for my opinion as to what

(Testimony of Meyer Pritkin.)

would constitute a reasonable salary for the services he was expected to render to this new partnership. I recalled that I had advised him the year before that a reasonable salary for the services to the partnership between himself and his wife would be \$12,000.00 a year and the prior partnership was paying that amount. I thought that conditions had not changed much so far as relating to his services in the intervening year's time, so I suggested the same salary of \$12,000.00 per year. I have had a lot of experience in tax matters.

Cross-Examination

Mr. Parker did not mention tax savings to me in connection with the gifts to the children and forming a partnership. I suggested it to him after he had told me of his plan to make the gifts and form the partnership. That of course was before the partnership was formed.

I was on a retainer with his company for accounting, auditing, preparation of tax returns, etc. I have been doing that type of work for him for 15 years or more. The giving of tax advice in a general way is part of the responsibilities of an accountant and plans for minimizing taxes to a degree, not attempting to borrow litigation, is also part of this work.

I advised Mr. Parker about the tax consequences and the organizational complications of the entire set-up.

(Testimony of Meyer Pritkin.)

I did not talk to Mr. Wilson about the figure, \$52,000.00, as a value of Mr. Parker's services for 1944. I do not know where he got that figure.

Re-Direct Examination

Prior to the time that Mr. Parker had told me he wanted to make a gift to the children, I had never suggested to him that such a procedure would save income taxes.

Re-Cross-Examination

I did discuss with Mr. Parker's counsel the matter of the filing of the petition with the Probate Court with a Claim for Tax Adjustment in the guardianship proceedings. I do not recall if I prepared any of the papers that went into that proceeding.

J. CURTIS ENGLE

called as a witness by and on behalf of the defendant being first duly sworn was examined and testified as follows:

Direct Examination

My name is J. Curtis Engle. I am an Internal Revenue Agent. I have been such for 16 years. At the present time I am stationed in Phoenix, Arizona. I work out of the Los Angeles office however.

I examined the returns of Elgin R. Parker and Flo Parker and children for the year 1944. I exam-

(Testimony of J. Curtis Engle.)

ined the individual returns and the partnership returns. I noticed that the partnership returns showed newly admitted partners so I inquired as to the capital and services they performed and I found that the new partnership afforded no necessary business purpose and I therefore recommended that it be denied for income tax purposes and that the income be taxed to the two original partners, Elgin R. Parker and Flo Parker. I recommended that refunds be made to the children.

CHESTER F. PERRY

called as a witness by and on behalf of the defendant being first duly sworn was examined and testified as follows:

My name is Chester F. Perry. I have been in the Government service since April of 1946. I investigated the income tax returns of Mr. and Mrs. Elgin R. Parker and their children for the years subsequent to 1944. I investigated the returns about in the same manner as had been done for the previous year, and included the children's income in the returns of the parents. I have made computations showing the tax consequences for the years 1945 and 1946.

ROY E. KELLY

called as a witness by and on behalf of the defendant being first duly sworn was examined and testified as follows:

My name is Roy E. Kelly. I came into the Internal Revenue Service in July of 1941. I have been in such service since that time except for two and a half years military leave.

I was assigned to examine the claims filed for the recovery of the taxes for 1944 and the claims were rejected. I examined the evidence in our files and talked to the taxpayer by telephone and he referred me to his attorney who advised that suit had been started. I recommended a rejection of the claims and the Commissioner followed my recommendation.

Cross-Examination

We had instructions from Washington to consider the merits of family partnership cases.

The defendant rests. We want to file with the Court a written motion for a directed verdict on the grounds therein stated.

The Court: The motion is denied.

Condensation of Other Evidence

The complaints allege and the answers admit certain facts, and plaintiffs' attorney at the beginning of the trial read to the Jury the statements contained in the complaints which were admitted in the answers.

During the trial, the parties entered into oral stipulations as follows:

1. That any documents that were admitted into evidence should be shown to the Jury.

2. That the bonds required by the Probate Court were filed for each guardianship estate.

3. That the Federal income taxes of the four Parker children as shown on their 1944 returns were paid to the defendant and were refunded to the children.

4. The plaintiffs filed claims for refund in proper legal form and within the time provided by law, covering the grounds set forth in the complaint.

5. That the full jury was in the box throughout the entire trial.

The plaintiffs introduced into Evidence Exhibits numbered 1 to 16, inclusive, which are set out herein in full or digested as follows:

Exhibit 1: Elgin R. Parker's Deed of Gift to the four children which is identical with Exhibit 2 excepting the name of the grantor.

Exhibit 2: Flo Parker's Deed of Gift to the four children which is identical with Exhibit 1 excepting the name of the grantor and balance sheet of taxpayer.

PLAINTIFFS EXHIBIT No. 2

Deed of Gift

Flo Parker, of the County of Orange, State of California, in consideration of the love and affection she bears to her children, hereinafter named, does hereby give, transfer, assign, convey and deed, out of her sole and separate property, twelve and one-half per cent of all her right, title and interest in and to the following described property, to each of her children, as his or her sole and separate property, as follows:

Flo Dian Parker born August 1, 1929,
Patricia Lee Parker, born September 19, 1932,
Rowland Tibbetts Parker, born May 1, 1937,
Arthur Elgin Parker, born September 8, 1940.

Flo Parker is a partner in the partnership known as Southern Heater Company, which operates a business of manufacturing and selling heaters, said business being conducted at 133 East Palmer Street, Compton, California, and said partnership also carries on the same type of business under various other names, such as Merit Heater Company, United States Heater Company, Crown Heater Company, Southern Galvanizing Company and Bessemer Engineering Company.

Flo Parker owns a one-half interest in said partnership and a one-half interest in all the assets thereof, and by this instrument gives to each of her above-named children a six and one-quarter per cent interest in the said partnership and in the

assets of said partnership, as of the close of business October 31, 1943. Said assets in said partnership are more particularly described as follows:

Cash on hand and in bank, accounts receivable, merchandise inventories, inventories of materials and supplies and finished goods, buildings on the real estate hereinafter described, machinery and equipment located in the buildings on the property hereinafter described, as well as shop tools, dies, furniture and fixtures, delivery equipment, deferred accounts, accounts receivable (employees'), unexpired insurance, sundry deposits, patents and trade-marks and good will, and other assets, all appertaining to the businesses of the partnerships mentioned above, carried on at 133 East Palmer Street in Compton, California, or on the property hereinafter described.

The real estate owned by said partnership and involved by this deed of gift is further described as follows:

Land on which the Plant stands:

Those portions of Wright's Addition to the Town of Compton, as per map recorded in Book 7, Page 55 of Miscellaneous Records, and of Range 1 of the Temple and Gibson Tract, as per map thereof recorded in Book 2, Pages 540 and 541 of Miscellaneous Records, in the City of Compton, County of Los Angeles, State of California, described as follows:

Beginning at the Southwest corner of Lot 2 in Block 5 of said Wright's Addition to the Town of Compton, said Southwest corner being in the East-

erly line of Wilmington Street as said street is shown on the Map of Tract No. 759, as per Map thereof recorded in Book 16, Page 13 of Maps; thence northerly, along the said Easterly line of Wilmington Street, 871.2 feet, to the southwest corner of Block "I" of Tract No. 8765, as per map thereof recorded in Book 41, Pages 88 and 89 of Maps; thence Easterly, along the Southerly line of said Block "I," 500 feet, to the Southeast corner of said Block "I"; thence southerly parallel with the Easterly line of Wilmington Street, as hereinbefore described, 871.2 feet to the Southeast corner of Block 5 of Wright's Addition to the Town of Compton, hereinbefore described; thence Westerly, along the Southerly line of said Block 5, a distance of 500 feet, to the point of beginning.

Otherwise known as 133 East Palmer, Compton, California.

it being understood that the donor is giving a six and one-quarter per cent interest in and to said assets and real estate to each of her said children named above.

The gifts, assignments and conveyances of the six and one-quarter per cent interest in and to the partnership and in and to the assets of the said partnership are subject to the liabilities of the partnership, as shown in Schedule "A," attached hereto, and to such further liabilities for renegotiations, Federal Income Taxes on Flo Parker and Elgin R. Parker, for the years 1941, 1942, and 1943, as may finally be determined to be due, and for

such other liabilities as may arise and be determined to be a liability of the business as of October 31, 1943, including liabilities to Flo Parker and Elgin R. Parker, as shown in Exhibit "A."

To Have and To Hold to the several Grantees as their respective sole and separate property.

Witness my hand this thirty-first day of October, 1943.

/s/ FLO PARKER.

State of California

County of Los Angeles—ss.

On this thirty-first day of October, 1943, before me, a Notary Public in and for said County, personally appeared Flo Parker, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same.

Witness my hand and official seal.

[Seal] /s/ CAPITOLA FIERKE,

Notary Public in and for said
County and State.

My commission expires Sept. 28, 1946.

The above gifts are from the separate property of my wife, Flo Parker, and while I have no interest in said property, I approve of such gifts.

/s/ ELGIN R. PARKER.

Filed Jan. 10, 1950.

Exhibits 3, 11: These exhibits comprise copies of 13 documents that were filed by Elgin R. Parker as the guardian for the guardianship estates of his four minor children in the Superior Court of the State of California, in and for the County of Orange, in the proceeding entitled "In the Matter of the Guardianship of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker and Arthur Elgin Parker, minors, Docket No. A-11392." The following digest of these documents is considered sufficient for the purposes of this appeal.

A. Petition for Appointment of Guardian signed by Elgin R. Parker requesting that he be appointed guardian of the estates of his four above-named children, stating their ages are 14, 11, 6 and 3 years, respectively; that each child owns a $12\frac{1}{2}\%$ interest in and to the partnership known as Southern Heater Company and in and to the assets owned by said partnership. The real estate was described as were the other assets and liabilities, by Exhibit A, attached. The petition stated that the value of the personal property of each minor was \$19,646.18 and the value of the real estate of each minor was \$7,214.23 and that the probable annual income was \$3,000.00 for each minor. The mother, Flo Parker, approved the appointment of her husband, Elgin R. Parker, and Flo Dian Parker, who was 14 years of age, nominated and requested the appointment of her father, Elgin R. Parker, as guardian of her estate. This petition was filed December, 1943,

B. Application for Instruction on Investment of Funds of Wards filed February 7, 1944, by Elgin R. Parker, as guardian.

In the Superior Court of the State of California
In and for the County of Orange

No. A-11392

In the Matter of the Guardianship of FLO DIAN
PARKER, PATRICIA LEE PARKER,
ROWLAND TIBBETTS PARKER, and
ARTHUR ELGIN PARKER,

Minors.

APPLICATION FOR INSTRUCTION ON
INVESTMENT OF FUNDS OF WARDS

To the Superior Court of the State of California,
In and for the County of Orange:

Petitioner, Elgin R. Parker, represents as follows:

That he filed a petition for appointment of guardian of his minor children, Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker, and Arthur Elgin Parker, in the above-entitled Court, and that on the thirty-first day of December, 1943, the Honorable Court made an order appointing him guardian upon his giving a bond to said minors, and each of them, if given by a surety company authorized to furnish such bond, in the sum of Twenty-three Thousand Dollars (\$23,000), and taking the oath required by law;

That your petitioner has taken up with several surety companies the matter of procuring said bonds.

The only condition upon which any surety company will write these bonds is that the Court make an order under Section 1557 of the Probate Code, instructing the guardian to enter into the partnership agreement with other owners of interests in the business known as Southern Heater Company, and instructing the guardian to keep the property of the wards invested in the partnership interests of said Southern Heater Company, with authority in the guardian, as partner, to retain in the partnership some of the profits of the business.

As a matter of background, it may be explained that your petitioner, Elgin R. Parker, and his wife, Flo Parker, were, prior to October 31, 1943, equal copartners and owners of the business of manufacturing heaters, with a business address at 133 East Palmer Street, Compton, California.

On October 31, 1943, affiant gave to each of his four children a $6\frac{1}{4}$ per cent interest in and to the assets of said partnership and in said partnership interest, and Flo Parker, the mother of said children, gave to each of said four children a $6\frac{1}{4}$ per cent interest in and to the assets of said partnership, and interest in said partnership, with the result that your petitioner owns a 25 per cent interest in said business, his wife, Flo Parker, owns a 25 per cent interest in said business, and each of the four children own a $12\frac{1}{2}$ per cent interest in said business.

It is now necessary for a new partnership agreement to be entered into by and between the petitioner, his wife, and the guardian for the four guardianship estates.

Petitioner has built up said business to the point where it earns a substantial profit, and earned a substantial profit before the war. A copy of the balance sheet was attached to the original petition for appointment of the guardian. It shows that the business is in good financial condition.

It is to the best interests of the said guardianship estates, from the standpoint of participating in the earnings of a going business, and from the standpoint of income and estate taxes, that the guardian enter into a partnership agreement and continue to own an interest in the said partnership of Southern Heater Company. It is expected that the business will continue to prosper, and that the guardianship estates will enjoy their share of the profits and that substantial estates will be built up for the said wards. It will be prudent for the partnership to retain some of the profits, in good years, to enable the firm to tide over lean years.

On the other hand, should your petitioner fail to secure the instruction he needs, so that he will be unable to qualify as guardian, the interest in the business which the wards now own would probably have to be sold or liquidated. Your petitioner and his wife are probably the only persons who would want to buy an interest in this closely held business, and your petitioner is not in a financial position to do so. The result would be that the business would

probably have to be liquidated and the properties of the wards invested in low interest-bearing securities, and your petitioner would have his business terminated. Under said circumstances the income from the wards' estates, and perhaps the capital of the wards' estates, might have to be used for their support, with the end that the guardianship estates would suerly be reduced and perhaps entirely used up.

Consequently, your petitioner can confidently say that it is to the best interests of the guardianship estates that the original plans be carried forward, and that the Court order and instruct your petitioner to retain the interest in the partnership and enter into a new partnership agreement, in a form to be approved by the Court, which agreement will authorize the partnership to retain some of the profits.

Wherefore, petitioner prays for a hearing on the petition and that the Court make an order authorizing and instructing your petitioner to enter into a partnership agreement with your petitioner, Flo Parker, and the guardian for the four guardianship estates; the business to be known as the Southern Heater Company; which said business also uses various other names, such as Merit Heater Company, United States Heater Company, Crown Heater Company, Southern Galvanizing Company, and Bessemer Engineering Company, said partnership agreement to authorize the partnership to retain profits in the business, at the discretion of the partners, and instructing your petitioner to con-

tinue to hold the interests in said partnership business and assets; and for further orders as may be proper in the premises.

In view of the fact that your petitioner is the guardian, it is requested that the Court order that notice be dispensed with.

Dated February 3, 1944.

/s/ ELGIN R. PARKER,
Petitioner.

/s/ MELVIN D. WILSON,
Attorney for Petitioner.

State of California
County of Orange—ss.

Elgin R. Parker, being duly sworn, deposes and says that he is the petitioner in the above and foregoing petition; that he has read the petition and knows the contents thereof, and that same is true of his own knowledge, except as to the matters which are therein stated upon information and belief, and as to those matters he believes it to be true.

/s/ ELGIN R. PARKER.

Subscribed and sworn to before me, a Notary Public, this 3rd day of February, 1944.

[Seal] /s/ CAPITOLA FIERKE,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Sept. 28, 1946.

[Endorsed]: Filed Feb. 7, 1944.

C. Order Instructing Guardian on Investment of Guardianship Funds filed February 7, 1944. The order authorized the guardian to act, as prayed in the Application for Instructions on Investment of Funds of Wards.

D. Petition for Instruction on Signing a Partnership Agreement filed March 15, 1944. A copy of the proposed Partnership Agreement approved by the guardian was filed with the Court and the guardian requested the Court for authority and instruction to sign as guardian said partnership agreement.

E. Order for Instruction on Signing a Partnership Agreement filed March 15, 1944. The Court authorized and instructed the guardian to sign the partnership agreement and approved the form of the partnership agreement.

F. Order Appointing Guardian of Minors filed February 7, 1944. The Court appointed Elgin R. Parker as guardian for the estates of the four children conditional upon his giving Surety Company bonds for \$23,000.00 for each guardianship estate.

G. Letters of Guardianship. This document shows that Elgin R. Parker was appointed guardian for the estates of the four children and he took his oath of office.

H. Inventory and Appraisement. Elgin R. Parker filed an inventory for each guardianship estate and the appraiser appointed by the Court

found the value for each guardianship estate to be \$24,745.98, being one-eighth of the net worth shown on the balance sheet attached to the deed introduced by the plaintiffs as Exhibit 2.

I. First Annual Account of Guardian filed May 3, 1945. Attached to the First Annual Account was a report of the activities of the Southern Heater Company for the year ended October 31, 1944, made by Meyer Pritkin & Company, Certified Public Accountants. The account showed an opening balance for each estate of \$24,745.98 and a closing balance after adding income and deducting the withdrawals of \$41,385.42 for each guardianship estate.

J. Decree Settling First Annual Account of Guardian and Ordering Payment of Attorneys' Fees filed August 19, 1945. The decree approved the First Annual Account and authorized the guardian to pay \$125.00 attorneys' fees as prayed.

K. Order Settling Fifth Annual Account of Guardian and Order for Payment of Attorneys' Fees and Order Instructing Guardian on Investment of Funds of Wards filed November 22, 1948.

In the Superior Court of the State of California,
In and for the County of Orange

No. A-11,392

In the Matter of the Guardianship of FLO DIAN
PARKER, PATRICIA LEE PARKER,
ROWLAND TIBBETTS PARKER and
ARTHUR ELGIN PARKER,
Minors.

ORDER SETTLING FIFTH ANNUAL AC-
COUNT OF GUARDIAN AND ORDER
FOR PAYMENT OF ATTORNEYS' FEES
AND ORDER INSTRUCTING GUARDIAN
ON INVESTMENT OF FUNDS OF WARDS

Comes now Elgin R. Parker, guardian of the guardianship estates of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker and Arthur Elgin Parker, minors, by Melvin D. Wilson, Attorney, and presents to the Court for settlement his Fifth Annual Account showing charges in favor of each of said guardianship estates amounting to \$88,639.92 and claiming credits amounting to \$300.00, leaving a balance of \$88,339.92 in his hands belonging to each of said guardianship estates, subject to unsettled claims of Elgin R. Parker and Flo Parker for adjustment on account of federal and state income taxes for the years 1944, 1945 and 1946; that he now proves to the satisfaction of the Court that said Account was filed on or about the 15th day of November, 1948; that the Clerk thereupon appointed the 26th day of November, 1948, as the time for settlement thereof; that notice of the

time and place of said settlement has been duly given as required by law and that no person appearing to except to or contest said Account, the Court, after hearing evidence, finds said Account correct and that the attorneys' fees set forth in the accompanying report are justly due and payable out of said estate.

It Is Therefore Ordered, Adjudged and Decreed by the Court that said Account be in all respects approved, allowed and settled and that Elgin R. Parker forthwith, out of the moneys in his hands belonging to said estates, pay to Melvin D. Wilson, Esq., the sum of \$200.00.

The Court Further Orders that Elgin R. Parker, as guardian of the above-entitled guardianship estates, be hereby authorized and instructed to participate in taking the following steps:

1. To cause the dissolution of the partnership known as Southern Heater Company;
2. To exchange the interest of each guardianship estate in said partnership for twelve and one-half per cent ($12\frac{1}{2}\%$) of the capital stocks held by said partnership and the pro rata shares of notes issued by Elgin R. Parker and Flo Parker, payable to the partnership, and assigned by the partnership to said guardianship estates.

Dated this 7 day of December, 1948.

/s/ RAYMOND THOMPSON,
Judge of the Superior Court.

[Endorsed]: Filed Dec. 7, 1948.

Exhibit 4. Partnership Agreement.

PLAINTIFFS' EXHIBIT No. 4

Articles of Copartnership

These Articles of Co-Partnership, made and entered into as of the first day of November, 1943, by and between Elgin R. Parker, Flo Parker, and Elgin R. Parker, as guardian of the properties of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker, and Arthur Elgin Parker, minors, Witnesseth:

1. The parties hereto have agreed, and do hereby agree, to become partners together, under the fictitious firm name and style of Southern Heater Company. The said partnership will also use the firm names of Merit Heater Company, United States Heater Company, Crown Heater Company, Southern Galvanizing Company, and Bessemer Engineering Company.

2. Said partnership shall carry on and conduct a business of manufacturing and selling water heaters; and shall carry on any other business in connection with the foregoing or in furtherance of the partnership purposes, and shall engage in any business or transaction whatsoever, which the partners may from time to time agree upon, to the same extent as natural persons might or could do.

3. The place of business of said partnership is 133 East Palmer Street, Compton, California, which

place may be changed from time to time by agreement of the partners.

4. Said partnership shall continue for the common and mutual benefit and advantage of the parties herto, subject to the terms and conditions of this agreement, until such time as the same shall be dissolved by any of the partners or by operation of law.

5. (a) The partners have contributed, and do hereby contribute, and by these presents do assign, transfer and set over and deliver unto the partnership, for partnership purposes, all of the assets of that certain manufacturing water heater business heretofore operated by Elgin R. Parker and Flo Parker, as co-partners under the fictitious firm names of Southern Heater Company, Merit Heater Company, United States Heater Company, Crown Heater Company, Southern Galvanizing Company, and Bessemer Engineering Company. Said assets, contributed to the partnership, as aforesaid, are now owned by the parties hereto in the following proportions: Elgin R. Parker 25 per cent, Flo Parker 25 per cent, Flo Dian Parker $12\frac{1}{2}$ per cent, Patricia Lee Parker $12\frac{1}{2}$ per cent, Rowland Tibbets Parker $12\frac{1}{2}$ per cent, and Arthur Elgin Parker $12\frac{1}{2}$ per cent; the last four named partners operating through their guardian, Elgin R. Parker. It is hereby declared that henceforth all of said assets shall belong to the partnership hereby created, but the respective interest of the parties hereto in the partnership and the capital, income, profits and pro-

ceeds thereof and therefrom, shall be the sole and separate property of each of said parties free from any community or other interest on the part of the other parties.

(b) The transfer of said assets to the partnership, as aforesaid, is subject to liabilities, which liabilities the partnership does hereby assume. An itemized list of said assets and of the known liabilities, is contained in the balance sheet as of October 31, 1943, hereinafter annexed and made a part hereof. It is understood that the assets are subject to liabilities not shown in the attached balance sheet: For renegotiation, such Federal and State income taxes on Flo Parker and Elgin R. Parker for the years 1941, 1942 and 1943, as may finally be determined to be due, and for such other liabilities as may arise and be determined to be a liability of the predecessor business, or of Elgin R. Parker or of Flo Parker, as of October 31, 1943.

6. The capital of the partnership shall consist of:

(a) The assets listed on said balance sheet at October 31, 1943, hereunto annexed;

(b) Any and all other or further contributions which the partners, or any of them, may hereafter make; and

(c) All machinery, equipment, contracts, good will, property and assets of every kind, which the partnership may hereafter in any manner acquire.

7. (a) The partners shall have interests in and to the capital of the partnership in the following proportions: Elgin R. Parker 25 per cent, Flo Parker 25 per cent, Flo Dian Parker $12\frac{1}{2}$ per cent, Patricia Lee Parker $12\frac{1}{2}$ per cent, Rowland Tibbetts Parker $12\frac{1}{2}$ per cent, and Arthur Elgin Parker $12\frac{1}{2}$ per cent, in and to the partnership capital.

(b) Inasmuch as Elgin R. Parker proposes to devote a greater amount of his time to the partnership affairs than do the other partners, and will, therefore, render a greater amount of service thereto, it is agreed that all net income or net profits derived from the partnership shall belong to the parties hereto in the following proportions: After deducting the salary provided for in paragraph 10 hereof, 25 per cent to Elgin R. Parker, 25 per cent to Flo Parker, $12\frac{1}{2}$ per cent to Flo Dian Parker, $12\frac{1}{2}$ per cent to Patricia Lee Parker, $12\frac{1}{2}$ per cent to Rowland Tibbetts Parker, and $12\frac{1}{2}$ per cent to Arthur Elgin Parker.

8. The net income and net profits of the partnership shall be paid and distributed to the parties hereto in the proportion above set forth from time to time as the partners may determine, and any and all losses or expenses incurred in connection with the partnership business and affairs shall be borne and paid by the partners in the same proportions as the net income and net profits are divided, that is to say, 25 per cent to Elgin R. Parker, 25

per cent to Flo Parker, 12½ to Flo Dian Parker, 12½ per cent to Patricia Lee Parker, 12½ per cent to Rowland Tibbetts Parker, and 12½ per cent to Arthur Elgin Parker.

9. The net income and net profits of the partnership shall be determined and computed in accordance with the standard and prevailing accounting practices, with the usual deductions for operating expenses, depreciation, taxes and other items, as approved by a certified public accountant or accountants selected by the partners.

10. It is understood and agreed that the partners may from time to time authorize the payment to any of the partners, in addition to their share of the net profits, of salaries, bonuses, or other compensation for services rendered to the partnership, in which event such salaries, bonuses or other compensation shall be charged to the operating expenses of the partnership. Until further agreement, Elgin R. Parker shall receive a salary of Twelve Thousand Dollars (\$12,000) per year.

11. At all times during the continuance of said partnership, each of the parties hereto shall give a sufficient amount of his or her time, attention and attendance to the conduct of the business of the partnership as shall be necessary and proper for the efficient operation of said business and the carrying out of the purposes of the partnership; and each of the partners will at all times, to the utmost of his skill and power, exert his best efforts for the joint interest, benefit and advantage of the

partners and the business of the partnership. All partners shall be kept fully advised with respect to the partnership business and affairs.

12. There shall at all times be kept during the continuance of said partnership just and true books of account, wherein shall be entered a record of all moneys received and disbursed and all other transactions in connection with the partnership business; and said books shall be used in common by the partners, and any of them shall have access thereto at any time without interruption or hindrance from the others. The books of the partnership shall be balance from time to time as the partners may agree, in such manner as to exhibit the true state and condition of the affairs of the partnership. None of the partners shall receive or pay out any money or engage in any transaction on behalf of the partnership unless the same shall be immediately entered in the books and accounts of the partnership.

13. None of the partners shall have the right to sell, transfer, assign or convey his or her interest in the partnership or its business, property or assets, or any part thereof, without giving the other partners the prior right and option to purchase such interest, at the same price and upon the same terms and conditions, for a period of ninety (90) days after notice in writing to the other partners of his or her intention to make such sale or transfer. Such notice shall be given in writing by the part-

ner desiring to sell, and shall specify the price the selling partner is to receive for his or her interest, and the terms of payment thereof. The remaining partners shall thereupon have the right and option for a period of ninety (90) days from the giving of said notice, to purchase the interest of the partners desiring to sell at the same price and upon the same terms, which option shall be exercised by notice in writing to the partner desiring to sell. The remaining partners may participate in this right to purchase in their respective proportions. Should one or more partners not desire to participate in the purchase of additional partnership interest, then the other remaining partners shall have the right to participate in the purchase, in their respective proportions.

14. Any notice given hereunder may be given by personal delivery to parties to whom the same is directed, or same may be forwarded to such parties by registered mail at his or her last known address. In case of service by registered mail, such notice shall be deposited in the United States mail in the County of Los Angeles, State of California, and notice shall be deemed to have been given on the date of mailing.

15. Upon any dissolution of said partnership, a full and final accounting of the assets and property of the partnership shall be taken, and the same shall, as soon as practicable, be liquidated, and the debts due the partnership collected and

the proceeds applied first to the discharge of the liabilities of the partnership and the expenses of liquidation, and the surplus, if any, shall be divided between the partners, their heirs, executors or administrators in proportion to their respective interests in the capital of the partnership.

16. This agreement shall bind and inure to the benefit of the respective heirs, executors and administrators of the parties hereto. The masculine gender, when used herein shall be deemed to include the feminine, and the singular shall include the plural and the plural the singular.

Executed as of the day and year first above written.

/s ELGIN R. PARKER,

/s/ FLO PARKER.

FLO DIAN PARKER,

By /s/ ELGIN R. PARKER,

Guardian.

PATRICIA LEE PARKER,

By /s/ ELGIN R. PARKER,

Guardian.

ROWLAND TIBBETTS

PARKER,

By /s/ ELGIN R. PARKER,

Guardian.

ARTHUR ELGIN PARKER,

By /s/ ELGIN R. PARKER,

Guardian.

State of California,
County of Los Angeles—ss.

On this 25th day of February, 1944, before me, a Notary Public in and for said County and State, personally appeared Elgin R. Parker, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] /s/ CAPITOLA FIERKE,
Notary Public in and for the County of Los Angeles, State of California.

My Commission expires Sept. 28, 1946.

State of California,
County of Los Angeles—ss.

On this 25th day of February, 1944, before me, a Notary Public in and for said County and State, personally appeared Flo Parker, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

CAPITOLA FIERKE,
Notary Public in and for the County of Los Angeles, State of California.

My Commission expires Sept. 28, 1946.

State of California,
County of Los Angeles—ss.

On this 25th day of February, 1944, before me, a Notary Public in and for said County and State, personally appeared Elgin R. Parker, as guardian of the estates of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker, and Arthur Elgin Parker, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] /s/ CAPITOLA FIERKE,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Sept. 28, 1946.

[Endorsed]: Filed Jan. 10, 1950.

Exhibit 5. Sales Tax Permit. The new partnership consisting of the plaintiffs and the four children received a California Sales Tax Seller's Permit under the name of Southern Heater Company showing the initials of the six partners, dated November 1, 1943.

Exhibit 6. This consisted of a notice to the new partnership, consisting of the plaintiffs and the children, of the Employer's Identification Number un-

der Chapter 9 of the Internal Revenue Code.

Exhibit 7. This exhibit showed that a new partnership consisting of the plaintiffs and the four children filed a Certificate of Fictitious Firm Name, Southern Heater Company, and the said certificate was duly published and filed in accordance with the law.

Exhibit 8. This was a copy of one of the four surety bonds filed by the guardian in the four partnership estates, each in the amount of \$23,000.00.

Exhibit 9. First Amendment to Partnership Agreement. This amendment simply provided that the salary which Elgin R. Parker was to receive from the partnership was to be the community property of himself and wife.

Exhibit 10. Second Amendment to Partnership Agreement. This agreement dated May 24, 1946, recited that since the partnership had transferred its active business to two corporations in exchange for their stocks and now that this partnership merely held the stocks and the real estate, the salary of Elgin R. Parker provided for in the original agreement was reduced to \$200.00 per month, said salary to be paid by the partnership.

Exhibit 12. Agreement to Dissolve Partnership, with balance sheet attached thereto.

PLAINTIFFS' EXHIBIT No. 12

Agreement for Dissolution of Partnership

This Agreement made this 30th day of November, 1948, entered into between Elgin R. Parker, Flo Parker, and Elgin R. Parker, as guardian of the properties of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker and Arthur Elgin Parker,

Witnesseth:

Whereas, as of the 1st day of November, 1943, the parties entered into Articles of Co-partnership to operate a business known as Southern Heater Company and also known as Merit Heater Company, United States Heater Company, Crown Heater Company, Southern Galvanizing Company, Bessemer Engineering Company and American Control Company; and

Whereas, it is deemed to the best interests of the parties hereto that said partnership be dissolved inasmuch as the active operating business has been transferred to various corporations and the partnership now merely holds stock in said corporations and notes of the partners.

Now, Therefore, be it understood and agreed as follows:

1. That the partnership known by the above names shall be dissolved as of November 1, 1948.
2. That the assets and liabilities of the partnership as of October 31, 1948, are as shown on Exhibit A attached hereto.

3. That the interests of the partners in the partnership as of November 1, 1948, were as follows:

| | |
|------------------------------|------|
| Elgin R. Parker..... | 25% |
| Flo Parker | 25% |
| Flo Dian Parker | 12½% |
| Patricia Lee Parker..... | 12½% |
| Rowland Tibbetts Parker..... | 12½% |
| Arthur Elgin Parker..... | 12½% |

It is understood that the stock of Southern Heater Corporation, American Control Corporation, Parker Realty Company and Radiantair Control Corporation will be divided among the partners in relation to their interests in the partnership.

4. It is further agreed that the notes receivable from partners, owned by the partnership, will be distributed to the partners as follows:

- (a) To Elgin R. Parker:
Note signed by E. R. Parker for \$26,217.92;
Note signed by Flo Parker for \$27,464.71;
- (b) To Flo Parker:
Note signed by E. R. Parker for \$26,217.92;
Note signed by Flo Parker for \$27,464.71;
- (c) To Flo Dian Parker:
Note signed by E. R. Parker for \$13,108.95;
Note signed by Flo Parker for \$13,732.35;
- (d) To Patricia Lee Parker:
Note signed by E. R. Parker for \$13,108.95;
Note signed by Flo Parker for \$13,732.35;

- (e) To Rowland Tibbetts Parker:
Note signed by E. R. Parker for \$13,108.96;
Note signed by Flo Parker for \$13,732.35;
- (f) To Arthur Elgin Parker:
Note signed by E. R. Parker for \$13,108.96;
Note signed by Flo Parker for \$13,732.35.

5. It is understood that the remaining assets in the partnership will be divided among the partners in proportion to their interests in the firm and that each will assume and be subject to a pro rata share of the liabilities of the partnership as shown by Exhibit A.

6. It is agreed that Elgin R. Parker, as one of the partners, shall assign, on behalf of the partnership, the notes, stocks and other assets to the respective partners and that this partnership will cease to exist as of November 1, 1948.

7. It is agreed that notice of the dissolution of the partnership will be published in the Los Angeles Daily Journal and that a notice of the dissolution will be filed with the County Clerk of Los Angeles County, California.

Witness our hands and seals this 30th day of November, 1948.

/s/ ELGIN R. PARKER,

/s/ FLO PARKER,

/s/ ELGIN R. PARKER,

As Guardian of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker and Arthur Elgin Parker.

EXHIBIT "A"

Southern Heater Company
Statement of Assets and Liabilities
As at October 31, 1948

Assets

| | | |
|--------------------------------------|-------------|--------------|
| Cash in Bank | \$ 1,328.88 | |
| Notes Receivable from | | |
| Mr. and Mrs. Parker | 214,730.48 | |
| Accounts Receivable—Sundry | 258.21 | |
| Investments in Stocks (At Cost) : | | |
| Southern Heater Corporation | 340,222.76 | |
| Parker Realty Corporation | 58,000.00 | |
| American Control Corporation | 52,000.00 | |
| Radiantair Control Corporation | 15,000.00 | |
| | <hr/> | |
| Total Assets | | \$681,540.33 |

Liabilities

| | | |
|-------------------------------|-------------|--------------|
| Accounts Payable—Sundry | \$ 4,820.96 | |
| | <hr/> | |
| Partnership Capital | | \$676,719.37 |
| | | <hr/> <hr/> |

Detail of Partners' Accounts:

| | | |
|---------------------------|--------------|--------------|
| E. R. Parker | \$169,179.83 | |
| Flo Parker | 169,179.84 | |
| Arthur Parker | 84,589.92 | |
| Patricia Lee Parker | 84,589.92 | |
| Flo Dian Parker | 84,589.93 | |
| Rowland T. Parker | 84,589.93 | |
| | <hr/> | |
| | | \$676,719.37 |
| | | <hr/> <hr/> |

[Endorsed]: Filed Jan. 10, 1950.

Exhibit 13. Notice of Dissolution of Partnership. A notice of the dissolution of the partnership as of November 1, 1948, was published in March, 1949, in the Los Angeles Daily Journal as shown by the verified report of the publishing company.

Exhibit 14. This exhibit comprised seven 1944 Federal Income Tax returns, six for the plaintiffs and their four children and one for the partnership. The partnership return showed a net income after paying Elgin R. Parker's salary of \$12,000.00 of \$252,535.84. It showed that each child was entitled to \$31,566.98 and that each was taxable on that and each parent was taxable on \$63,133.95 plus \$6,000.00 salary from the partnership. The individual returns reported their shares of the partnership income as indicated above.

Exhibit 15. Summary of Partnership Capital Accounts.

PLAINTIFF'S EXHIBIT NO. 15

Southern Heater Company
Analysis of Partners' Capital Accounts
November 1, 1943 to October 31, 1948

| | Total | E. R. Parker | Flo Parker | E. R. Parker, Guardian | | | |
|---|--------------|-----------------|---------------|------------------------|---------------------------|--------------------|----------------------|
| | | | | Arthur E. Parker | Patricia Lee Parker | Flo Dian Parker | Rowland T. Parker |
| Beginning Capital—November 1, 1943..... | \$197,967.80 | \$ 49,491.94 | \$ 49,491.94 | \$24,745.98 | \$24,745.98 | \$24,745.98 | \$24,745.98 |
| November 1, 1943 to October 31, 1944 | | | | | | | |
| Add: Net Profit | 252,535.82 | 63,133.95 | 63,133.95 | 31,566.98 | 31,566.98 | 31,566.98 | 31,566.98 |
| | 450,503.62 | 112,625.89 | 112,625.89 | 56,312.96 | 56,312.96 | 56,312.96 | 56,312.96 |
| Less: Withdrawals for Income Tax | 130,263.12 | 35,506.48 | 35,506.48 | 14,812.54 | 14,812.54 | 14,812.54 | 14,812.54 |
| Other Withdrawals | 3,506.14 | 980.70 | 2,065.44 | 115.00 | 115.00 | 115.00 | 115.00 |
| | 133,769.26 | 36,487.18 | 37,571.92 | 14,927.54 | 14,927.54 | 14,927.54 | 14,927.54 |
| Capital—October 31, 1944 | 316,734.36 | 76,138.71 | 75,053.97 | 41,385.42 | 41,385.42 | 41,385.42 | 41,385.42 |
| November 1, 1944 to October 31, 1945 | | | | | | | |
| Add: Net Profit | 217,646.15 | 54,411.54 | 54,411.53 | 27,205.77 | 27,205.77 | 27,205.77 | 27,205.77 |
| | 534,380.51 | 130,550.25 | 129,465.50 | 68,591.19 | 68,591.19 | 68,591.19 | 68,591.19 |
| Less: Withdrawals for Income Tax | 118,594.94 | 39,641.46 | 37,260.48 | 10,423.25 | 10,423.25 | 10,423.25 | 10,423.25 |
| Other Withdrawals | 15,486.70 | 243.35 | 243.35 | 3,750.00 | 3,750.00 | 3,750.00 | 3,750.00 |
| | 134,081.64 | 39,884.81 | 37,503.83 | 14,173.25 | 14,173.25 | 14,173.25 | 14,173.25 |
| Capital—October 31, 1945 | 400,298.87 | 90,665.44 | 91,961.67 | 54,417.94 | 54,417.94 | 54,417.94 | 54,417.94 |
| November 1, 1945 to October 31, 1946 | | | | | | | |
| Add: Net Profit | 300,783.48 | 75,195.86 | 75,195.86 | 37,597.94 | 37,597.94 | 37,597.94 | 37,597.94 |
| | 701,082.35 | 165,861.30 | 167,157.53 | 92,015.88 | 92,015.88 | 92,015.88 | 92,015.88 |
| Less: Withdrawals for Income Tax | 111,733.37 | 50,678.44 | 50,517.17 | 2,634.44 | 2,634.44 | 2,634.44 | 2,634.44 |
| Other Withdrawals | 9,166.30 | 1,226.40 | 7,582.90 | 89.25 | 89.25 | 89.25 | 89.25 |
| | 120,899.67 | 51,904.84 | 58,100.07 | 2,723.69 | 2,723.69 | 2,723.69 | 2,723.69 |
| Capital—October 31, 1946 | 580,182.68 | 113,956.46 | 109,057.46 | 89,292.19 | 89,292.19 | 89,292.19 | 89,292.19 |
| November 1, 1946 to October 31, 1947 | | | | | | | |
| Add: Net Profit | 24,296.66 | 6,074.17 | 6,074.17 | 3,037.08 | 3,037.08 | 3,037.08 | 3,037.08 |
| | 604,479.34 | 120,030.63 | 115,131.63 | 92,329.27 | 92,329.27 | 92,329.27 | 92,329.27 |
| Less: Withdrawals for Income Tax | 111,590.26 | 22,500.53 | 22,500.67 | 16,647.27 | 16,647.27 | 16,647.26 | 16,647.26 |
| Other Withdrawals | 19,503.50 | 9,817.75 | 10,042.75 | 89.25 | 89.25 | 89.25 | 89.25 |
| | 92,086.76 | 12,682.78 | 12,457.92 | 16,736.52 | 16,736.52 | 16,736.51 | 16,736.51 |
| Capital—October 31, 1947 | 512,392.58 | 107,347.85 | 102,673.71 | 75,592.75 | 75,592.75 | 75,592.76 | 75,592.76 |
| Payment on Tax Deficiency | 64,066.72 | 31,934.00 | 32,132.72 | ----- | ----- | ----- | ----- |
| Adjusted Capital—October 31, 1947 | 448,325.86 | 75,413.85 | 70,540.99 | 75,592.75 | 75,592.75 | 75,592.76 | 75,592.76 |
| November 1, 1947 to October 31, 1948 | | | | | | | |
| Add: Net Profit | 75,229.12 | 18,807.28 | 18,807.28 | 9,403.64 | 9,403.64 | 9,403.64 | 9,403.64 |
| | 523,554.98 | 94,221.13 | 89,348.27 | 84,996.39 | 84,996.39 | 84,996.40 | 84,996.40 |
| Less: Withdrawals for Income Tax | 4,818.05 | 768.07 | 882.37 | 695.90 | 695.91 | 695.90 | 695.90 |
| Other Withdrawals | 56,748.04 | 29,144.88 | 29,144.88 | 289.43 | 289.43 | 289.43 | 289.43 |
| | 61,566.09 | 29,912.95 | 30,027.25 | 406.47 | 406.48 | 406.47 | 406.47 |
| Capital—October 31, 1948 | 676,719.37 | 169,179.84 | 169,179.84 | 84,589.92 | 84,589.91 | 84,589.93 | 84,589.93 |
| (Before Issuance of Notes) | 461,988.89 | 64,308.18 | 59,321.02 | 84,589.92 | 84,589.91 | 84,589.93 | 84,589.93 |
| Add: Partners' Notes | 214,730.48 | 104,871.66 | 109,858.82 | ----- | ----- | ----- | ----- |
| Capital—October 31, 1948 | 676,719.37 | 169,179.84 | 169,179.84 | 84,589.92 | 84,589.91 | 84,589.93 | 84,589.93 |
| Distribution to Partners—October 31, 1948 | | | | | | | |
| (Per Schedule Attached) | 676,719.37 | 169,179.84 | 169,179.84 | 84,589.92 | 84,589.91 | 84,589.93 | 84,589.93 |
| Balance..... | ----- | ----- | ----- | ----- | ----- | ----- | ----- |

[Italicized figures are shown in red.]

E. R. Parker, Guardian
Disbursements From Guardianship Funds—Other Than Income Taxes
November 1, 1943 to October 31, 1948

| | <u>Total</u> | <u>Arthur E. Parker</u> | <u>Patricia Lee Parker</u> | <u>Flo Dian Parker</u> | <u>Rowland T. Parker</u> |
|--------------------------------------|--------------------|-----------------------------|--------------------------------|----------------------------|------------------------------|
| November 1, 1943 to October 31, 1944 | | | | | |
| Guardian Bond | \$ 460.00 | \$ 115.00 | \$ 115.00 | \$ 115.00 | \$ 115.00 |
| November 1, 1944 to October 31, 1945 | | | | | |
| Series E Bonds | 15,000.00 | 3,750.00 | 3,750.00 | 3,750.00 | 3,750.00 |
| November 1, 1945 to October 31, 1946 | | | | | |
| Guardian Bond | 357.00 | 89.25 | 89.25 | 89.25 | 89.25 |
| November 1, 1946 to October 31, 1947 | | | | | |
| Guardian Bond | 357.00 | 89.25 | 89.25 | 89.25 | 89.25 |
| November 1, 1947 to October 31, 1948 | | | | | |
| Partnership Adjustments: | | | | | |
| Adjustment of 10/31/47 | | | | | |
| Reserve for Service Charges | <i>1,584.00</i> | <i>396.00</i> | <i>396.00</i> | <i>396.00</i> | <i>396.00</i> |
| Return of Edison Co. Deposit | <i>332.84</i> | <i>83.21</i> | <i>83.21</i> | <i>83.21</i> | <i>83.21</i> |
| Guardian Bond | 357.00 | 89.25 | 89.25 | 89.25 | 89.25 |
| Legal Fees | 402.12 | 100.53 | 100.53 | 100.53 | 100.53 |
| | <u>\$15,016.28</u> | <u>\$3,754.07</u> | <u>\$3,754.07</u> | <u>\$3,754.07</u> | <u>\$3,754.07</u> |

[Italicized figures shown in red.]

Southern Heater Company
Analysis of Distribution of Net Assets
Dissolution as of October 31, 1948

| | Total | E. R. Parker | Flo Parker | E. R. Parker, Guardian | | | |
|---|--------------|-----------------|---------------|---------------------------------|---------------|--------------------|----------------------|
| | | | | Patricia Arthur E. Parker | Lee Parker | Flo Dian Parker | Rowland T. Parker |
| Cash in Bank | \$ 1,328.88 | \$ 332.22 | \$ 332.22 | \$ 166.11 | \$ 166.11 | \$ 166.11 | \$ 166.11 |
| Accounts Receivable—Employees | 77.16 | 19.29 | 19.29 | 9.65 | 9.64 | 9.64 | 9.65 |
| Notes Receivable From Partners | 214,730.48 | 53,682.62 | 53,682.62 | 26,841.31 | 26,841.31 | 26,841.31 | 26,841.31 |
| Investment in Radiantair, Inc. | 15,000.00 | 3,750.00 | 3,750.00 | 1,875.00 | 1,875.00 | 1,875.00 | 1,875.00 |
| Investment—Southern Heater Corporation | 340,222.76 | 85,055.69 | 85,055.69 | 42,527.84 | 42,527.84 | 42,527.85 | 42,527.85 |
| Investment—American Control Corporation | 52,000.00 | 13,000.00 | 13,000.00 | 6,500.00 | 6,500.00 | 6,500.00 | 6,500.00 |
| Investment—Parker Realty Co. | 58,000.00 | 14,500.00 | 14,500.00 | 7,250.00 | 7,250.00 | 7,250.00 | 7,250.00 |
| Tax Refund Receivable | 181.05 | 45.26 | 45.26 | 22.63 | 22.63 | 22.64 | 22.63 |
| Customers' Credit Balances | 4,820.96 | 1,205.24 | 1,205.24 | 602.62 | 602.62 | 602.62 | 602.62 |
| Partnership Capital | \$676,719.37 | \$169,179.84 | \$169,179.84 | \$84,589.92 | \$84,589.91 | \$84,589.93 | \$84,589.93 |

[Italicized figures are shown in red.]

Filed Jan. 10, 1950.

Exhibit 16. Application for Authority to Compromise Claims filed April 11, 1947.

PLAINTIFFS' EXHIBIT No. 16.

In the Superior Court of the State of California
In and for the County of Orange

No. A-11392

In the Matter of the Guardianship of

FLO DIAN PARKER, PATRICIA LEE
PARKER, ROWLAND TIBBETTS
PARKER and ARTHUR ELGIN PARKER,
Minors.

APPLICATION FOR AUTHORITY TO
COMPROMISE CLAIMS

To the Superior Court of the State of California
In and for the County of Orange:

Petitioner, Elgin R. Parker, represents as follows:

With respect to the application for authority to compromise claims for the year ended October 31, 1944, heretofore filed by your petitioner in August of 1946, the Court is advised that Elgin R. Parker and Flo Parker have decided to pay the additional income taxes proposed by the Commissioner of Internal Revenue for the year 1944, to file claims for refund and to prosecute the same in the Federal District Court in Los Angeles.

The Commissioner of Internal Revenue has proposed additional Federal income taxes for the year ended October 31, 1944, against the parties as follows:

| | |
|-----------------------|-------------|
| Elgin R. Parker | \$55,589.70 |
| Flo Parker | 55,562.19 |

The Commissioner has offered to refund to each guardianship estate the taxes paid by it for the year 1944 in the amount of \$13,986.09 each.

Elgin R. Parker and Flo Parker would like to pay said additional taxes in part by cash and in part by offsetting the refunds due to the guardianship estates against the additional taxes due from the parents. This procedure is satisfactory with the Commissioner of Internal Revenue but your petitioner would like approval of the Court therefor.

Your petitioner prays approval of the following steps and procedures:

1. That he as guardian be authorized by this Court to sign an offset statement with Elgin R. Parker and Flo Parker and the Commissioner of Internal Revenue whereby the refunds due to the guardianship estates for the year 1944 may be credited against the additional taxes claimed by the Commissioner of Internal Revenue to be due from Elgin R. Parker and Flo Parker for the year 1944.

2. That in the event Elgin R. Parker and Flo Parker eventually lose their litigation with the

Commissioner of Internal Revenue with respect to the incidence of the tax on the income of this partnership that Elgin R. Parker and Flo Parker be permitted to keep and retain said refunds in at least part settlement of their claims against the guardianship estate on account of income taxes.

3. In the event that Elgin R. Parker and Flo Parker eventually win their litigation with the Commissioner of Internal Revenue with respect to the incidence of tax on the income of this partnership for the year 1944 that Elgin R. Parker and Flo Parker pay to these guardianship estates the said refunds of \$13,986.09 each, plus any interest benefits that have been obtained by said Elgin R. Parker and Flo Parker and that this procedure be in complete settlement of said claims by said Elgin R. Parker and Flo Parker against said guardianship.

4. That in the event Elgin R. Parker and Flo Parker eventually lose their litigation with the Commissioner of Internal Revenue respecting income tax on the income of this partnership for the year 1944 that the matter of the claims by Elgin R. Parker and Flo Parker against these guardianship estates on account of income taxes for that year be further considered and, if necessary, adjudicated.

5. That arrangements similar to the above be made with respect to California income taxes in the event that the Franchise Tax Commissioner of

the State of California makes determinations similar to those made by the Commissioner of Internal Revenue for the year 1944.

Dated April 7, 1947.

/s/ ELGIN R. PARKER,
Petitioner.

/s/ MELVIN D. WILSON,
Attorney for Petitioner.

State of California,
County of Los Angeles—ss.

Elgin R. Parker, being first duly sworn, on oath deposes and says that he is the petitioner in the above and foregoing Application for Authority to Compromise Claims; that he has read said application and knows the contents thereof and that the facts therein stated are true as he verily believes.

/s/ ELGIN R. PARKER.

Subscribed and Sworn to before me this 7th day of April, 1947.

[Seal] /s/ CAPITOLA FIERKE,
Notary Public in and for Said County and State.

My Commission expires Oct. 30, 1950.

[Endorsed]: Filed April 11, 1947.

Exhibit 16. Order for Authority to Compromise
Claims filed April 11, 1947.

In the Superior Court of the State of California
In and for the County of Orange

No. A-11392

In the Matter of the Guardianship of

FLO DIAN PARKER, PATRICIA LEE
PARKER, ROWLAND TIBBETTS
PARKER and ARHUR ELGIN PARKER,
Minors.

ORDER FOR AUTHORITY TO COMPROMISE
CLAIMS

The petition of Elgin R. Parker, as guardian of the estates of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker and Arthur Elgin Parker, minors, for authority to compromise claims against the guardian coming on regularly to be heard this 25th day of April, 1947, and the Court, after examining the petition and hearing the evidence, finds that notice of the time and place of said hearing has been duly given as required by law and that no persons appearing to except to or contest said petition, and finds that all the allegations of said petition are true and that the

conditional or tentative compromise of claims prayed for in said petition is equitable and proper and correct,

It is, therefore, ordered by the Court that the guardian of each of said guardianship estates is hereby authorized as follows:

1. That he as guardian is hereby authorized by this Court to sign an offset statement with Elgin R. Parker and Flo Parker and the Commissioner of Internal Revenue whereby the refunds due to the guardianship estates for the year 1944 may be credited against the additional taxes claimed by the Commissioner of Internal Revenue to be due from Elgin R. Parker and Flo Parker for the year 1944.

2. That in the event Elgin R. Parker and Flo Parker eventually lose their litigation with the Commissioner of Internal Revenue with respect to the incidence of the tax on the income of this partnership that Elgin R. Parker and Flo Parker be permitted to keep and retain said refunds in at least part settlement of their claims against the guardianship estate on account of income taxes, and that the claims of Elgin R. Parker and Flo Parker be further considered, and if necessary, adjudicated.

3. In the event that Elgin R. Parker and Flo Parker eventually win their litigation with the Commissioner of Internal Revenue with respect to the incidence of tax on the income of this partnership

for the year 1944 that Elgin R. Parker and Flo Parker pay to these guardianship estates the said refunds of \$13,986.09 each, plus any interest benefits that have been obtained by said Elgin R. Parker and Flo Parker and that this procedure be in complete settlement of said claims by said Elgin R. Parker and Flo Parker against said guardianship.

4. That arrangements similar to the above be made with respect to California income taxes in the event that the Franchise Tax Commissioner of the State of California makes determinations similar to those made by the Commissioner of Internal Revenue for the year 1944.

Dated: 4/25/47.

/s/ [Indistinguishable]

Judge of the Superior Court.

[Endorsed]: Filed April 25, 1947.

The defendant introduced into evidence Exhibits which are printed or condensed as follows:

Defendant's Exhibit A. Documents in the Guardianship Proceedings.

Defendant's Exhibit A comprised 28 documents filed in the guardianship proceedings. Documents 1, 2, 3, 5, 6, 8, 10, 11, 20, 23, and 28 were filed by plaintiff and are described in Plaintiffs' Exhibits, above.

Documents 4, 7, 9, 15, 18, and 25 are copies of

orders dispensing with notice or orders prescribing notice of various hearings or the like.

Defendant's Exhibit A included documents not covered above which are condensed or included in full, as follows:

1. Second Annual Account of Guardian and Petition for Allowance of Attorneys' Fees filed January 19, 1946.

2. Decree Settling Second Annual Account of Guardian and Ordering Payment of Attorneys' Fees filed February 1, 1946.

3. Application for Instruction on Investment of Funds of Wards filed April 5, 1946. The application recited that each guardianship estate had a one-eighth interest in the partnership known as Southern Heater Company, and each interest had a book value of \$54,417.94. In addition, each guardianship estate had Series E bonds costing \$3,750.00 making a total for each estate of \$58,167.94.

The application requested authority for the guardian to cause the partnership, Southern Heater Company, to transfer personal property such as machine and equipment inventory, cash, to a corporation about to be formed to be known as Southern Heater Corporation. The cost of the assets to be transferred was \$304,000.00 and the partnership was to receive from Southern Heater Corporation all of its outstanding stock of the par value of \$304,000.00. Said corporation would carry on the business of manufacturing and selling of water

heaters and other household appliances. It would leave from the partnership such land and buildings as it needed and would employ as officers Elgin R. Parker, his wife, and other employees of the partnership.

The application also requested authority to transfer from the partnership personal property having a cost of \$48,000.00 to a corporation about to be formed called The American Control Corporation which would issue out of its outstanding stock of a par value of \$48,000.00 to the partnership. This corporation would manufacture and sell automatic controls and brass specialties and its officers and directors would also be Elgin R. Parker and his wife and other employees of the partnership.

The application recited various business reasons for the proposed incorporation of parts of the partnership business.

4. Order Instructing Guardian on Investment of Guardianship Funds, filed April 5, 1946. The Court issued its order instructing the guardian to transact the matters covered in the application.

5. The defendant offered in evidence Application for Authority to Compromise Claims which was filed in the Probate Court August 27, 1946. The plaintiffs objected on the ground that there were some statements therein signed by Elgin R. Parker, the guardian, as to the status of the law on family partnerships and that this was a matter of opinion of law and could not be taken as an admission of any kind against him. The document was admitted

over the plaintiffs' objection and sent out to the jury room with the Jury along with all the other documents in the case.

In the Superior Court of the State of California
In and for the County of Orange

No. A-11392

In the Matter of the Guardianship of

FLO DIAN PARKER, PATRICIA LEE
PARKER, ROWLAND TIBBETTS
PARKER and ARTHUR ELGIN PARKER,
Minors.

APPLICATION FOR AUTHORITY TO
COMPROMISE CLAIMS

To the Superior Court of the State of California
In and for the County of Orange:

Petitioner, Elgin R. Parker, represents as follows:

That he is the duly appointed and acting guardian of the estates of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker and Arthur Elgin Parker, minors, having been appointed on the 31st day of December, 1943, and having posted the proper surety bond required by the order of the Court.

Each guardianship estate consists of a 12½% interest in and to the business and assets of a partnership known as Southern Heater Company and Series "E" United States Government Bonds in the face value of \$3,750.00. As of October 31, 1945, the interest of each guardianship estate in the capital of the partnership amounted to \$54,417.94 book value. The partnership assets consist of all of the stock of Southern Heater Corporation, a California corporation, and all of the stock of American Control Corporation, a California corporation, real estate, bank accounts and minor miscellaneous assets.

As of October 31, 1943, your petitioner and his wife, Flo Parker, were equal partners owning the business known as Southern Heater Company. On that date each of them gave to each of their four children named herein a 6¼% interest in and to the assets and business of said Southern Heater Company, a co-partnership. After the gift, with the approval of this Court, the guardian entered into a partnership agreement wherein the four children and their parents became partners under the firm name of Southern Heater Company. At the time of the gift and of the creation of the partnership it was expected and anticipated that each of the partners, including the four minors, would be taxable upon their shares of the partnership income. Each of the six persons filed Federal and State income tax returns and paid the tax shown on their income from the partnership.

The Commissioner of Internal Revenue through

the Internal Revenue Agent in Charge at Los Angeles, California, has made an examination of the income tax returns of the partnership and of the six partners for the period ending October 31, 1944, and has rendered a report under date of July 15, 1946.

The Commissioner of Internal Revenue has taken the position that the children's interest in the partnership will not be recognized for income tax purposes and that all the income of the partnership will be taxed to their parents. The Commissioner has proposed additional Federal income taxes for the year ended October 31, 1944, as follows:

| | |
|----------------------|-------------|
| Elgin R. Parker..... | \$55,589.70 |
| Flo Parker..... | 55,562.19 |

The Commissioner has offered to refund to each guardianship estate the taxes paid by it for the year 1944 in the amount of \$13,986.09 each.

It will be seen that the inclusion in the parents' return of the children's share of the partnership income results in a greater additional tax than the refunds offered to the children. This is due to the fact that the income tax rates increase as the amount of income increases.

The Commissioner bases his contention upon decisions of the Supreme Court of the United States in *A. L. Lusthaus vs. Commissioner*, 66 Sup. Ct. 539, and *Frances E. Tower vs. Commissioner*, 66 Sup. Ct. 532, both decided February 25, 1946, wherein the income of so-called family partnerships was taxed to the husbands who had built up the

business. Since the decisions of the Supreme Court, the Tax Court of the United States and other Federal Courts have followed the Supreme Court cases in facts more nearly paralleling those in the cases involved in the instant case.

It will be seen with respect to the partners of Southern Heater Company that if the adult partners are required to pay the tax on all of the income of the partnership they will have to draw their portions of the income and capital out of the business with the result that in the long run the children will own the business and the parents will have nothing. If this was carried to its logical conclusion the parents would, of course, be completely without assets with which to pay the income tax and the children would own the entire business.

This was not the intention of the parents in making gifts to the children. It was intended that each would pay the tax on his or her share of the income.

It seems entirely probable that the claims of the Commissioner of Internal Revenue in this case will be sustained by the Tax Court and the other Courts of the United States and by the State tax authorities. Your petitioner and his wife will probably file protests and endeavor to effect some settlement and saving of tax but it appears that this is an undertaking with very little prospect of success.

Your petitioner, as an individual, and his wife, Flo Parker, as the donors of interests to the children, believe and claim that if they are required

to pay income tax on the whole of the income of the partnership of Southern Heater Company that the guardianship estates herein involved should transfer to your petitioner and his wife sufficient amounts of money, properties or credits to enable the petitioner and his wife to pay the additional taxes involved. In other words, the guardianship estates should turn over to the petitioner and his wife for the year 1944 an amount equal to the net additional tax demanded by the Commissioner of \$111,151.89. The guardianship estates should turn over to the parents, the claimants herein, amounts equal to the refunds which the guardianship estates may receive from the Collector of Internal Revenue aggregating \$55,944.36 and additional money, properties or credits in an amount of \$55,207.53. This could be done by transferring a credit of \$111,151.89 from the capital accounts of the guardianship estates on the partnership books of Southern Heater Company to your petitioner and Flo Parker in the amounts of \$55,075.94 each, for a total of \$111,151.89.

The petitioner and his wife, Flo Parker, believe that such an adjustment is required by the circumstances of the case, by their intention in making the original gifts, by the impossibility of going on with the situation if such adjustment is not made, and by the equities of the case.

If approval of the compromise herein requested is not granted it is obvious that it will not be long before the Commissioner of Internal Revenue will be filing claims against the guardianship estates for

the income taxes due from the parents on the total income of the partnership. In such case the Commissioner would probably distrain upon the partnership assets and disrupt, if not ruin, the business.

It is believed, therefore, that it is for the best interests of the guardianship estates and for the advantage of the wards that this adjustment be made and that this compromise be approved.

Wherefore, your petitioner prays that the Court hear this matter and authorize the guardian on behalf of the guardianship estates to turn over to Elgin R. Parker and Flo Parker out of the guardianship estates interests in the capital of Southern Heater Company in the amount of \$55,075.94 for the benefit of Elgin R. Parker and the amount of \$55,075.94 for the benefit of Flo Parker on account of 1944 Federal income taxes.

It is further prayed that the Court hear this matter and authorize the guardian on behalf of the guardianship estates to turn over to Elgin R. Parker and Flo Parker out of the guardianship estates interests in the capital of Southern Heater Company for the benefit of Elgin R. Parker and for the benefit of Flo Parker on account of 1944 State income taxes, when the State returns have been audited and the additional State income taxes due from petitioner and his wife, Flo Parker, have been determined, and for further orders as may be proper in the premises.

In view of the fact that your petitioner is the guardian of the respective guardianship estates,

it is requested that the Court order that notice be dispensed with.

Dated August 17, 1946.

/s/ELGIN R. PARKER,
Petitioner.

s/ MELVIN D. WILSON,
Attorney for Petitioner.

State of California,
County of Los Angeles—ss.

Elgin R. Parker, being first duly sworn, on oath deposes and says that he is the petitioner in the above and foregoing Application for Authority to Compromise Claims; that he has read said Application and knows the contents thereof and that the facts therein stated are true as he verily believes.

/s/ ELGIN R. PARKER.

Subscribed and Sworn to before me this 11th day of August, 1946.

[Seal] /s/ L. E. MARTIN,
Notary Public in and for said County and State.

6. Memorandum in re Incidence of Federal Income Tax Liability on 1944 Partnership Income filed September 16, 1946.

The defendant offered this document in evidence and the plaintiffs objected on the ground that it was a memorandum signed by an attorney and expressed matters of opinion rather than statements

of fact and that it was not admissible as an admission against the interests of the plaintiffs. The Court admitted the document over the objection of the plaintiffs.

In the Superior Court of the State of California
In and for the County of Orange

No. A-11392

In the Matter of the Guardianship of

FLO DIAN PARKER, PATRICIA LEE
PARKER, ROWLAND TIBBETTS
PARKER and ARTHUR ELGIN PARKER,
Minors.

MEMORANDUM IN RE INCIDENCE OF FED-
ERAL INCOME TAX LIABILITY ON 1944
PARTNERSHIP INCOME

A. Result if Children Pay No Tax at All

| | Share of Partnership Income | Tax Burden | Balance Left After Federal Tax |
|----------------|-----------------------------------|--------------|--------------------------------------|
| Father | \$ 69,138.48 | \$ 97,053.85 | (\$27,915.37) |
| Mother | 69,138.48 | 96,838.84 | (27,700.36) |
| Flo Dian | 31,569.24 | | 31,569.24 |
| Patricia | 31,569.24 | | 31,569.24 |
| Rowland | 31,569.24 | | 31,569.24 |
| Arthur | 31,569.24 | | 31,569.24 |
| Totals..... | \$264,553.92 | \$193,892.69 | \$70,661.23 |

B. Result if All Share the Tax Burden in the
Original Proportions

| | Share of Partnership Income | Tax Burden | Balance Left After Federal Tax |
|----------------|-----------------------------------|---------------------|--------------------------------------|
| Father | \$ 69,138.48 | \$ 57,973.91 | \$11,164.57 |
| Mother | 69,138.48 | 57,702.46 | 11,436.02 |
| Flo Dian | 31,569.24 | 19,554.08 | 12,015.16 |
| Patricia | 31,569.24 | 19,554.08 | 12,015.16 |
| Rowland | 31,569.24 | 19,554.08 | 12,015.16 |
| Arthur | 31,569.24 | 19,554.08 | 12,015.16 |
| Totals..... | <u>\$264,553.92</u> | <u>\$193,892.69</u> | <u>\$70,661.23</u> |

C. Result if Children Pay All of the Additional Tax

| | Share of Partnership Income | Tax Burden | Balance Left After Federal Tax |
|----------------|-----------------------------------|---------------------|--------------------------------------|
| Father | \$ 69,138.48 | \$ 41,464.15 | \$27,674.33 |
| Mother | 69,138.48 | 41,276.65 | 27,861.83 |
| Flo Dian | 31,569.24 | 27,787.98 | 3,781.26 |
| Patricia | 31,569.24 | 27,787.97 | 3,781.26 |
| Rowland | 31,569.24 | 27,787.97 | 3,781.26 |
| Arthur | 31,569.24 | 27,787.97 | 3,781.26 |
| Totals..... | <u>\$264,553.92</u> | <u>\$193,892.69</u> | <u>\$70,661.20</u> |

Comments

1. Situation A is insufferable and unintended.

2. Situation B is unsatisfactory because the parents pay California Income Tax of about \$3,000.00 each, in addition to the Federal tax, and support themselves and five children. This would take approximately all of their earnings, while

the four children grew rich. This would be unfair to the fifth child, which has received no gift.

The parents paid considerable gift taxes on the 1943 gifts of interests in the business. Furthermore, the tax authorities will probably contend that the parents are subject to gift tax on the profits of each year which are credited to the children—that this was the parents' income, and when set over to the children on the partnership books, constitute a taxable gift.

The father received a salary of but \$12,000, whereas his services were worth at least \$52,000 per year. If a full and fair salary of \$52,000 per year had been paid the father, a result more comparable to that shown in situation C would have obtained.

3. Situation C is most equitable result. Out of the balance remaining to the parents, they would pay California income tax of about \$3,000 a year each, support themselves and five children, and have a reasonable balance left. The children would build up a considerable amount over a period of years.

The parents furnished all of the capital, do all the work and support the children, so should be taken care of first.

Under C, the children would still be in a favorable and fortunate position. They would receive, after all taxes, State and Federal, about 12% on their original gift.

4. California income tax is still to be reckoned

with, and should be settled on the same basis as the Federal tax.

5. This problem continues for all of 1945 and for four months of 1946, after which corporations were formed.

/s/ MELVIN D. WILSON.

7. Third Annual Account of Guardian.

This account records the activities of the partnership and of the guardian for the year ended October 31, 1946. It asks that the account be approved except that the pending claims of Elgin R. Parker and Flo Parker for adjustment on account of income taxes, which had not been acted upon by the Superior Court.

8. Decree Settling Third Annual Account of Guardian filed April 25, 1947. The Court made a decree approving the Third Annual Account and ordering the payment of attorneys' fees in the amount of \$100.00.

9. Fourth Annual Account of Guardian and Application for Authority to Compromise Claims, filed July 16, 1948.

This account showed the operations of the partnership and of the guardianship estates to March 31, 1948.

The guardian also asked authority of the Court

to use the federal income tax refunds payable to the children for 1945 and 1946 in the same manner and under the same terms as were set forth in plaintiffs' Exhibits No. 16 for the taxable year, 1944.

The account also requested authority of the Court to transfer the real estate owned by the partnership and costing \$58,000.00 to a corporation, about to be formed, to be known as The Parker Corporation, in consideration of issuing to the partnership all the outstanding stock of the corporation of a par value of \$58,000.00 and stated that the officers of the corporation would be Elgin R. Parker and his wife and sister who was an employee of the partnership.

The application stated that it was believed to be for the best interests of the guardianship estates to have the property owned by a corporation, as such ownership would prevent the title to the property being in undivided interests in several persons, such as might be the case should some of the wards attain majority or marry and die leaving a spouse or issue. If interests in the property fell into hands of persons with divergent views from the other owners of the interests, it would depress the value of each interest.

10. Order Settling Fourth Annual Account of Guardian filed July 30, 1948.

In the Superior Court of the State of California
In and for the County of Orange
No. A-11392

In the Matter of the Guardianship of

FLO DIAN PARKER, PATRICIA LEE
PARKER, ROWLAND TIBBETTS
PARKER and ARTHUR ELGIN PARKER,
Minors.

ORDER SETTLING FOURTH ANNUAL AC-
COUNT OF GUARDIAN AND ORDER FOR
PAYMENT OF ATTORNEY'S FEES AND
ORDER FOR AUTHORITY TO COMPRO-
MISE CLAIMS AND ORDER INSTRUCT-
ING GUARDIAN ON INVESTMENT OF
FUNDS OF WARDS

Comes now Elgin R. Parker, guardian of the guardianship estates of Flo Dian Parker, Patricia Lee Parker, Rowland Tibbetts Parker and Arthur Elgin Parker, minors, by Melvin D. Wilson, Attorney, and presents to the Court for settlement his Fourth Annual Account showing charges in favor of each of said guardianship estates amounting to \$89,078.02 and claiming credits amounting to \$1,084.50, leaving a balance of \$87,993.52 in his hands belonging to each of said guardianship estates, subject to unsettled claims of Elgin R. Parker and Flo Parker for adjustment on account of federal and state income taxes for the years 1944, 1945 and 1946; that he now proves to the satisfaction of the Court that said account was filed

on or about the — day of July, 1948; that the Clerk thereupon appointed the 30th day of July, 1948, as the time for the settlement thereof; that notice of the time and place of said settlement has been duly given as required by law and that no person appearing to except to or contest said account, the Court, after hearing evidence, finds said account correct and that the attorney's fees set forth in the accompanying report are justly due and payable out of said estate.

It Is Therefore Ordered, Adjudged and Decreed by the Court that said account be in all respects approved, allowed and settled and that Elgin R. Parker forthwith, out of the moneys in his hands belonging to said estates, pay to Melvin D. Wilson, Esq., the amount of \$400.00.

It Is Also Ordered, Adjudged and Decreed by the Court that the action of the guardian of each of said guardianship estates in retaining in the partnership of Southern Heater Company the earnings thereof for the seventeen months period ended March 31, 1948, excepting the withdrawals for personal use and current federal and state income taxes in the amount of \$1,084.50 for each estate, be hereby approved, allowed and settled.

The petition of Elgin R. Parker, as guardian of the above named estates, for authority to compromise claims against the guardian and the application for instruction on investment of funds of wards, coming on regularly to be heard this 30th day of July, 1948, and the Court, after examining the petition and hearing the evidence, finds that notice of the time and place of such hearing has

been duly given as required by law and that no person appearing to except to or contest said petition, finds that all of the allegations of said petition are true and that the conditional or tentative compromise of claims prayed for in said petition is equitable and proper and correct.

It Is Therefore Ordered by the Court that the guardian of each of said guardianship estates is hereby authorized as follows:

1. That he as guardian is authorized by this Court to sign an offset statement with Elgin R. Parker and Flo Parker and the Commissioner of Internal Revenue where the refunds due to the guardianship estates for the years 1945 and 1946 may be credited against the additional taxes claimed by the Commissioner of Internal Revenue to be due from Elgin R. Parker and Flo Parker for the years 1945 and 1946.

2. That in the event Elgin R. Parker and Flo Parker eventually lose their litigation with the Commissioner of Internal Revenue with respect to the incidence of the tax on the income of this partnership that Elgin R. Parker and Flo Parker are permitted to keep and retain said refunds in at least part settlement of their claims against the guardianship estates on account of income taxes.

3. In the event that Elgin R. Parker and Flo Parker eventually win their litigation with the Commissioner of Internal Revenue with respect to the incidence of tax on the income of this partnership for the years 1945 and 1946 that Elgin R.

Parker and Flo Parker pay to these guardianship estates the said refunds, plus any interest benefits that have been obtained by said Elgin R. Parker and Flo Parker thereon and that this procedure is in complete settlement of said claims by said Elgin R. Parker and Flo Parker against said guardianships.

4. That in the event Elgin R. Parker and Flo Parker eventually lose their litigation with the Commissioner of Internal Revenue respecting income tax on the income of this partnership for the years 1945 and 1946 that the matter of the claims by Elgin R. Parker and Flo Parker against these guardianship estates on account of income taxes for those years be further considered and, if necessary, adjudicated.

5. That arrangements similar to the above be made with respect to California income taxes in the event that the Franchise Tax Commissioner of the State of California makes determinations similar to those made by the Commissioner of Internal Revenue for the years 1945 and 1946.

The Court Further Orders that Elgin R. Parker, as guardian of the above-entitled guardianship estates, be hereby authorized and instructed to participate in taking the following steps:

1. To cause the formation of a corporation to be known as The Parker Corporation, or a similar name, with an authorized capital of \$100,000.00 consisting of 1,000 shares of capital stock, each of a par value of \$100.00; to transfer to said corpora-

tion from the assets of Southern Heater Company (a partnership) real property of a book value of approximately \$57,479.04 and cash in the amount of \$886.36, consideration for the issuance by said corporation to the partnership of stock of the par value of \$58,000.00, to be the then only outstanding stock of said corporation.

2. The partnership known as Southern Heater Company may continue in operation owning cash, stocks and other assets.

3. The above transfer to be made conditional upon obtaining approval of the surety and the pertinent state and federal authorities.

Dated: This 30th day of July, 1948.

/s/ ROBERT GARDNER,

Judge of the Superior Court.

[Endorsed]: Filed July 30, 1948.

11. Fifth Annual Account of Guardian, filed November 15, 1948.

This account stated that four claims had been presented against the guardianship estates and had not been settled except on a tentative basis.

It showed that each guardianship estate had a 12½% interest in the partnership known as Southern Heater Company, having a book value of \$84,589.92 and Series E Bonds having a cost of \$3,750.00 or a total for each estate of \$88,339.92.

The operating statement of the partnership for

the period April 1, 1948, to October 31, 1948, was shown as well as an analysis of the partnership capital and the balance sheet at October 31, 1948.

The account prayed for authority to pay attorneys' fees of \$200.00.

The account showed that the partnership, as of October 31, 1948, owned practically nothing except the stock of four corporations; namely, Southern Heater Corporation, American Control Corporation, The Parker Realty Company and Radiantair, Inc. and the notes signed by Elgin R. Parker and Flo Parker payable to the partnership. It stated that the notes of Elgin R. Parker and Flo Parker, owned by the partnership, were given to the partnership to represent the obligations to repay excessive withdrawals made by Elgin R. Parker and Flo Parker to enable said persons to pay their income taxes. The account said, "If the said parties win their income tax cases, they can pay the notes out of their income tax refunds. In the event they lose the income tax cases, they will seek further adjustment, with the approval of this Court, against the guardianship estates on account of income tax matters."

The report said that in as much as all the activities of the partnership had been reduced to the mere holding of stock of corporations, it was believed that it would be to the best interests of the partners and the guardianship estates that the partnership be dissolved and the stock and notes distributed to the partners who would hold them directly, or through their guardian.

The report prayed for approval of the account, showing the unsettled claims against each guardianship estate filed by Elgin R. Parker and Flo Parker for adjustment on account of income taxes; that an order be made for the payment of attorneys' fees of \$200.00; that the dissolution of the partnership be approved and the distribution of its assets directly to the partners or to the guardianship estates be authorized.

An Order Settling Fifth Annual Account of Guardian filed December 7, 1948, was made by the Court and appears among the plaintiffs' exhibits No. 3.

DEFENDANT'S EXHIBIT B

Flo Dian Parker (a minor)
(Individual)

Los Angeles Div.
LA:30D

Acceptance of Proposed Overassessment
Return filed in Sixth Collection District of California.

[Stamped]: To Bureau, May 19, 1947.
L. L. C.

The following overassessment or overassessments of tax are hereby accepted as correct:

taxable year ended December 31, 1944,
income tax in the sum of..... \$13,986.09

taxable year ended, income tax
in the sum of..... \$.....

taxable year ended (declared
value) excess-profits tax in the sum of \$.....

taxable year ended excess profits

tax in the sum of \$.

taxable year ended in the sum of \$.

amounting to the total sum of \$.

as indicated in the statement furnished the undersigned taxpayer(s), under date of July 15, 1946.

FLO DIAN PARKER (a minor),
(Taxpayer)

By /s/ ELGIN R. PARKER,

Guardian,

Box 629, Compton,
California.

[Stamped]: Received April 30, 1947. Internal Revenue Agent in Charge, Los Angeles Division.

Date: April 30, 1947.

NOTE.—The execution and filing of this acceptance at the address shown in the accompanying letter will expedite the indicated adjustment of your tax liability. This acceptance is not an agreement as provided under section 3760 of the Internal Revenue Code.

If this acceptance is executed with respect to a year for which a Joint Return of a Husband and Wife was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the agreement shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

DEFENDANT’S EXHIBIT B

Patricia Lee Parker (a minor)
(Individual)

Los Angeles Div.
LA:30D

Acceptance of Proposed Overassessment

Return filed in Sixth Collection District of California.

[Stamped]: To Bureau, May 19, 1947.
L. L. C. . .

The following overassessment or overassessments of tax are hereby accepted as correct:

| | |
|---|-------------|
| taxable year ended December 31, 1944, | |
| income tax in the sum of..... | \$13,986.09 |
| taxable year ended, income tax | |
| in the sum of..... | \$..... |
| taxable year ended (declared | |
| value) excess-profits tax in the sum of \$..... | |
| taxable year ended excess profits | |
| tax in the sum of | \$..... |
| taxable year ended.....in the sum of \$..... | |
| | <hr/> |

amounting to the total sum of..... \$.
as indicated in the statement furnished the under-
signed taxpayer(s), under date of July 15, 1946.

PATRICIA LEE PARKER

(a minor),

(Taxpayer)

By /s/ ELGIN R. PARKER,

Guardian,

Box 629, Compton,

California.

[Stamped]: Received April 30, 1947. Internal
Revenue Agent in Charge, Los Angeles Division.

Date: April 30, 1947.

NOTE.—The execution and filing of this acceptance at the address shown in the accompanying letter will expedite the indicated adjustment of your tax liability. This acceptance is not an agreement as provided under section 3760 of the Internal Revenue Code.

If this acceptance is executed with respect to a year for which a Joint Return of a Husband and Wife was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the agreement shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

DEFENDANT’S EXHIBIT B

Arthur Elgin Parker (a minor)
(Individual)

Los Angeles Div.
LA:30D

Acceptance of Proposed Overassessment

Return filed in Sixth Collection District of California.

[Stamped]: To Bureau, May 19, 1947.
L. L. C. ..

The following overassessment or overassessments of tax are hereby accepted as correct:

taxable year ended December 31, 1944,
income tax in the sum of..... \$13,986.09
taxable year ended, income tax
in the sum of..... \$.
taxable year ended (declared
value) excess-profits tax in the sum of \$.
taxable year ended excess profits
tax in the sum of \$.
taxable year ended.....in the sum of \$.

amounting to the total sum of..... \$.

as indicated in the statement furnished the undersigned taxpayer(s), under date of July 15, 1946.

ARTHUR ELGIN PARKER

(a minor),

(Taxpayer)

By /s/ ELGIN R. PARKER,

Guardian,

Box 629, Compton,

California.

[Stamped]: Received April 30, 1947. Internal Revenue Agent in Charge, Los Angeles Division.

Date: April 30, 1947.

NOTE.—The execution and filing of this acceptance at the address shown in the accompanying letter will expedite the indicated adjustment of your tax liability. This acceptance is not an agreement as provided under section 3760 of the Internal Revenue Code.

If this acceptance is executed with respect to a year for which a Joint Return of a Husband and Wife was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the agreement shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

DEFENDANT'S EXHIBIT B

Rowland Tibbetts Parker (a minor)
(Individual)

Los Angeles Div.

LA:30D

Acceptance of Proposed Overassessment

Return filed in Sixth Collection District of California.

[Stamped]: To Bureau, May 19, 1947.

L. L. C.

..

The following overassessment or overassessments of tax are hereby accepted as correct:

| | |
|---|-------------|
| taxable year ended December 31, 1944, | |
| income tax in the sum of..... | \$13,986.09 |
| taxable year ended, income tax | |
| in the sum of..... | \$..... |
| taxable year ended (declared | |
| value) excess-profits tax in the sum of | \$..... |
| taxable year ended excess profits | |
| tax in the sum of | \$..... |
| taxable year ended.....in the sum of | \$..... |

amounting to the total sum of..... \$.....
as indicated in the statement furnished the undersigned taxpayer(s), under date of July 15, 1946.

ROWLAND TIBBETTS

PARKER (a minor),
(Taxpayer)

By /s/ ELGIN R. PARKER,
Guardian,

Box 629, Compton,
California.

[Stamped]: Received April 30, 1947. Internal

Revenue Agent in Charge, Los Angeles Division.

Date: April 30, 1947.

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Where the taxpayer is a corporation, the agreement shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

[Endorsed]: Filed January 10, 1950. U.S.D.C.

[Endorsed]: Filed April 13, 1950. U.S.C.A.

Defendant's Exhibits C and D.

DEFENDANT'S EXHIBIT C

Federal Income Taxes in the Event the Jury Finds
That the Partnership Should Be Recognized
for Income Tax Purposes.

Taxable Year 1944

| | |
|-------------------------------|--------------|
| Elgin R. Parker | \$ 41,825.39 |
| Flo Parker | 41,637.88 |
| Elgin R. Parker, guardian for | |
| Patricia Lee | 14,309.22 |
| Rowland Tibbetts | 14,309.22 |
| Arthur Elgin | 14,309.22 |
| Flo Dian | 14,309.22 |

Total Tax Liability of Family..... \$140,700.15

Federal Income Tax of the Parker Family in the
Event the Jury Finds That the Family Part-
nership Should Not Be Recognized for Income
Tax Purposes.

| | |
|--------------------------------|--------------|
| Elgin R. Parker's will be..... | \$ 97,053.85 |
| Flo Parker's will be | 96,838.84 |

Total Tax Liability

\$193,892.69

Parker family will save Federal income
taxes if jury finds that the partner-
ship should be recognized for Fed-
eral income tax purposes in the
amount of \$ 53,192.54

Federal Income Tax Refunds Made to the
Parker Children—Taxable Year 1944

| | | |
|------------------------|-------------|------------------|
| Patricia Lee | \$13,986.09 | With 6% Interest |
| Rowland Tibbetts . . . | 13,986.09 | “ “ “ |
| Arthur Elgin | 13,986.09 | “ “ “ |
| Flo Dian | 13,986.09 | “ “ “ |

Total Refunds . . . \$55,944.36

[Endorsed]: Filed January 10, 1950. U.S.D.C.

[Endorsed]: Filed April 13, 1950. U.S.C.A.

DEFENDANT'S EXHIBIT D

Federal Income Taxes in the Event the Jury Finds
That the Partnership Should Be Recognized
for Income Tax Purposes.

Taxable Year 1945

| | |
|-------------------------------|--------------|
| Elgin R. Parker | \$ 35,639.91 |
| Flo Parker | 35,853.63 |
| Elgin R. Parker, guardian for | |
| Patricia Lee | 11,591.54 |
| Rowland Tibbetts | 11,591.54 |
| Arthur Elgin | 11,591.54 |
| Flo Dian | 11,591.54 |

Total Tax Liability of Family . . . \$117,859.70

Federal Income Tax of the Parker Family in the
Event the Jury Finds That the Family Part-
nership Should Not Be Recognized for Income
Tax Purposes.

| | |
|--------------------------------|--------------|
| Elgin R. Parker's will be..... | \$ 82,024.13 |
| Flo Parker's will be..... | 82,276.23 |
| <hr/> | |
| Total Tax Liability | \$164,300.36 |

| | |
|---|--------------|
| Parker family will save Federal income taxes if the Jury finds that the part- nership should be recognized for Fed- eral income tax purposes in the amount of | \$ 46,440.66 |
| <hr/> <hr/> | |

Federal Income Tax Refunds Made to the
Parker Children—Taxable Year 1945

| | | |
|----------------------|-------------|------------------|
| Patricia Lee | \$11,584.44 | With 6% Interest |
| Rowland Tibbetts ... | 11,584.44 | “ “ “ |
| Arthur Elgin | 11,584.44 | “ “ “ |
| Flo Dian | 11,584.44 | “ “ “ |
| <hr/> | | |
| Total Refunds... | \$46,337.76 | |

Federal Income Taxes in the Event the Jury Finds
That the Partnership Should Be Recognized
for Income Tax Purposes

Taxable Year 1946

| | |
|-------------------------------|--------------|
| Elgin R. Parker..... | \$ 49,206.72 |
| Flo | 49,206.72 |
| Elgin R. Parker, guardian for | |
| Patricia Lee | 16,175.73 |
| Rowland Tibbetts | 16,175.73 |
| Arthur Elgin | 16,175.73 |
| Flo Dian | 16,175.73 |

Total Tax Liability of Family....\$163,116.36

Federal Income Tax of the Parker Family in the
Event the Jury Finds the Family Partner-
ship Should Not Be Recognized for Income
Tax Purposes

| | |
|--------------------------------|--------------|
| Elgin R. Parker's will be..... | \$111,247.55 |
| Flo Parker's will be | 111,247.55 |

Total Tax Liability

Parker family will save Federal income taxes if
jury finds that the partnership should be recog-
nized for Federal income tax purposes in the
amount of.....\$59,378.74.

Federal Income Tax Refunds Made to the Parker
Children, Taxable Year, 1946

| | |
|------------------------|------------------------------|
| Patricia Lee | \$16,100.62 with 6% Interest |
| Rowland Tibbetts | 16,100.61 with 6% Interest |
| Arthur Elgin | 16,100.62 with 6% Interest |
| Flo Dian | 16,100.61 with 6% Interest |

Total Refunds\$64,402.46

Dated March 27, 1950.

The undersigned, attorney for appellants, certifies that in my opinion the above Statement of Evidence covers in condensed form all the evidence introduced at the trial.

/s/ MELVIN D. WILSON.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 28, 1950.

[Title of District Court and Causes.]

COURT'S INSTRUCTIONS TO THE JURY

The Court: Ladies and gentlemen of the jury, you have listened to counsel this morning and now you are going to have to go through the ordeal of listening to me while I give you the instructions covering the law of the case.

It becomes my duty as judge to instruct you in the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you. On the other hand, it is your exclusive province to determine the facts in the case and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law stated to you.

These two cases, consolidated for trial, were brought by Elgin R. Parker and his wife, Flo Parker, against the Collector of Internal Revenue for the recovery of federal income taxes paid by them for the calendar year 1944.

Elgin Parker sues to recover \$63,309.91 and Flo Parker sues to recover \$63,477.71. Both parties seek interest on those amounts. These suits, which will be hereinafter referred to in the singular, since they both involve the same question and the same facts, are in reality against the United States since if taxpayers, plaintiffs in this action, recover the judgments must be paid from the Treasury of the United States.

There is no issue between the parties to this action as to the amount of income derived from the business known as Southern Heater Company during the calendar year 1944. There is a controversy between them concerning the persons to whom that income is taxable.

The plaintiffs contend that each of them was en-

titled to a distributive share of the net income of Southern Heater Company equal to 25 per cent of said income and that their four minor children were partners in said enterprise and each entitled to a distributive share of $12\frac{1}{2}$ per cent of the total net income. The defendant, as Collector of Internal Revenue, contends that none of the four minor children were partners in said enterprise and each entitled to a distributive share of $12\frac{1}{2}$ per cent of the total net income. The defendant, as Collector of Internal Revenue, contends that none of the four minor children of the plaintiffs were partners for income tax purposes in the business enterprise known as Southern Heater Company and that the income from that business was taxable to each of the parents in equal shares.

It is undisputed that prior to October 31, 1943, plaintiffs were partners in a partnership known as Southern Heater Company, engaged in the business of manufacturing and selling heaters, with its place of business located at 133 East Palmer Street, Compton, California. Plaintiffs on and prior to that date owned all of the assets of the Southern Heater Company. They had four children whose names and ages on October 31, 1943, were: Flo Dian Parker, age 14; Patricia Lee Parker, age 11; Roland Tibbetts Parker, age 6, and Arthur Elgin Parker, age 3.

On October 31, 1943, plaintiffs executed separate deeds of gifts in favor of each of their children in consideration of love and affection, under which

the taxpayers purported to assign and convey to each of the children a one-eighth interest in the assets of the Southern Heater Company partnership. At that time plaintiff Elgin R. Parker was appointed by the Superior Court of Orange County, California, as guardian of the estates of his four children and obtained authority to execute, on behalf of his minor children, a partnership agreement.

On November 1, 1943, a written partnership agreement was entered into between Elgin R. Parker, Flo Parker, and Elgin R. Parker as guardian for the children, to continue the Southern Heater Company with the same assets as before. For the period here concerned, which is confined to the period from November 1, 1943, the date of the formation of the partnership, to October 31, 1944, the net income from the partnership amounting to \$264,553.92 was returned, for federal income tax purposes, 25 per cent by Elgin Parker, 25 per cent by Flo Parker, and 12½ per cent by each of the aforesaid minor children. The Commissioner of Internal Revenue concluded that the net income of the partnership should be taxed one-half to Elgin Parker and one-half to Flo Parker and none of the income could be taxed to the children.

That additional income taxes paid for 1944 by these plaintiffs were assessed by the Commissioner of Internal Revenue, whose action in making the assessment of said additional taxes is presumed to be correct, and before these plaintiffs, or either

of them, are entitled to a refund of any part of the additional income taxes paid by them for the calendar year 1944 it must be established by a preponderance of the evidence that the Commissioner's action in determining that no recognizable partnership relation existed between these plaintiffs and their four minor children for income tax purposes, and that the entire net income of the Southern Heater Company for 1944 was includible in the incomes of the plaintiffs for that year and in assessing said additional income taxes against the plaintiffs, was erroneous.

These cases involve taxes collected from Elgin R. Parker and Flo Parker by the defendant, Harry C. Westover, as Collector of Internal Revenue for the United States of America.

It is fundamental law in our United States that no person can be taxed on income unless he earns that income.

Common understanding and experience are the touchstones for the interpretation of the revenue laws. The dominant purpose of the revenue laws is the taxation of income to those who earn or otherwise create the right to receive it and enjoy the benefit of it when paid. The one who earns income but gives the right to receive that income to a favorite child has enjoyed the benefit of that income within the meaning of the Internal Revenue laws.

Individuals carrying on business in partnership are liable for federal income taxes only in their individual capacity.

By including their four minor children as well as themselves as partners in the business known as "Southern Heater Company," the plaintiffs, Elgin R. Parker and Flo Parker, his wife, reduced the federal income taxes of their family group for the calendar year 1944 from \$193,892.69 to \$138,685.16, thereby effecting a tax savings for the Parker family of \$55,207.53.

The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted. The existence of the family relationship does not create a status which determines tax questions in the cases you are now considering but is simply a warning that things may not be what they seem. Transactions between members of a family are to be carefully scrutinized lest what is in reality but one economic unit be multiplied into two or more by devices which, though valid under state law, are not conclusive so far as the acts of Congress imposing federal income taxes are concerned.

A gift of an interest in a family business, whether absolute or in trust, which makes no real change in the economic situation of the group or in the control or management of the business, will not reduce the obligations of the donor to account for and pay income tax on the earnings of the enterprise to the same extent as before the gift was made.

As I stated before, the issue in this case is

whether the partners, Elgin R. Parker and Flo Parker, really and truly intended that their four minor children would own an interest in the partnership assets and whether they intended that all six of them would join together for the purpose of carrying on the business and sharing in the profits and the losses as partners.

The Supreme Court has defined a partnership as follows: A partnership is generally said to be created when persons join together their money, goods, labor, or skill, for the purpose of carrying on a trade, profession, or business, and where there is community of interest in the profits and losses.

While the fact that the partnership in this case is made up of members of a family does not in and of itself establish that the arrangements should be disregarded for federal income tax purposes, that fact is a warning that things may not be what they seem. Transactions between members of a family should be carefully scrutinized to determine whether the arrangement is substantial and in reality is what it appears on the surface to be. In considering whether or not the partnership with the minor children is of sufficient substance to justify the splitting of the income of the business for federal income tax purposes, you may do so with the realization that the relationship between members of a family often makes it possible for one of the members to shift tax incidence by surface changes of ownership without disturbing in the least his domination and control over the subject

of the gift for the purposes for which the income from the property is used. He is able, in other words, to retain the substance of full enjoyment of all the rights which he had previously in the property.

While partnerships between husbands and wives, or between parents and children, are always open to scrutiny, and to close scrutiny, such partnerships are lawful. There can be legal partnerships between husbands and wives and parents and children under California law.

The fact that transfers to members of the family group may be mere camouflage does not, however, mean that they invariably are.

There is no federal law that prohibits a family partnership or a partnership between parents and minor children.

And there is no reason why Mr. or Mrs. Parker or anyone else should not reduce their taxes by a lawful partnership. "Over and over again courts have said that there is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. Everybody does so, rich or poor; and all do right, for nobody owes any public duty to pay more than the law demands; taxes are enforced exactions, not voluntary contributions."

Whether or not the purported partners have actually set up a real partnership or not, may also be attacked by outsiders, whether these outsiders are ordinary business creditors or, as in this case, the defendant, the Collector of Internal Revenue.

Here the Collector, the defendant, has said that this is not a bona fide or real partnership, and the issue is whether he is right or not.

And so, members of the jury, we come to the issue that I stated at the beginning: Was this really and truly a business partnership for the year 1944, and during that year did each of these four children through their guardian actually own their share of the partnership earnings?

There has been considerable evidence of matters prior to 1943 and 1944 and subsequent to then. That evidence is proper for you to consider, along with all of the other evidence, in throwing whatever light, if it does throw any light, on the question of whether there was a real intent to form a genuine partnership in the years 1943 and 1944.

In computing the net income of a partner for the purpose of determining the federal income tax payable by that partner there shall be included in the partner's net income his distributive share of the gains and losses sustained by the partnership from sales or exchanges of its capital assets and his distributive share of the ordinary net income or net loss of the partnership whether or not distribution of such gain, net income or loss of the partnership is actually made to the partner.

And in considering the provisions of the Internal Revenue Code and the various revenue acts which impose the income taxes whose refund is sought by the plaintiffs in these actions you are not to be so much concerned with the refinements of

title as with the actual command over the income which is taxed and the actual benefit for which the tax is paid. One vested with the right to receive income does not escape the income tax by any kind of anticipatory arrangement, however skillfully devised, by which he procures payment of it to another, since, by the exercise of his power to command the income, he enjoys the benefit of the income on which the tax is laid.

The transactions between the plaintiffs and their minor children should be carefully scrutinized by you and that if you determine from all the facts that the plaintiffs were able to retain the substance of all the rights which previously they had in the Southern Heater Company then you must determine that there was no valid partnership between the plaintiffs and their minor children for federal income tax purposes during the year 1944.

And you must determine after considering all of the facts, including the agreement between these plaintiffs and their minor children, the conduct of the parties to that agreement in the execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contributions, the actual control of the income and the purposes for which it was used, and any other facts throwing light on the true intent of the parties to the agreement whether those parties in good faith and acting with a business purpose intended to join

together in the present conduct of the enterprise known as Southern Heater Company.

In determining whether a witness is a credible one, or whether his testimony is to be believed, you should consider his manner upon the witness stand, his intelligence, the opportunity he has had to observe, or obtain knowledge of, the matters of which he testifies, the way in which he gives his testimony, his interest in the case, his relation to the parties or subject in controversy, and everything which may show bias or prejudice or the lack of it.

The testimony of one witness, entitled to full credit, is sufficient for the proof of any fact, and would justify a verdict in accordance with such testimony even if a number of witnesses have testified to the contrary, if, from the whole case, considering the credibility of the witnesses, and after weighing the various factors of evidence, the jury should believe that there is a balance of probability pointing to the accuracy and honesty of the one witness.

A fact proven to your satisfaction by proof of circumstances from a consideration of various items of indirect evidence, is nonetheless effectively established as though it depended upon direct evidence. Such circumstances must be connected in such a way as to concur and lead directly to the consideration which may be indicated thereby.

Evidence may be either direct or indirect. Direct evidence is that which proves a fact in dispute directly, without an inference or presumption, and

which itself, if true, conclusively establishes the fact. Indirect evidence is that which tends to establish the fact in dispute by providing another fact which, though true, does not of itself conclusively establish the fact in issue, but which affords an inference or presumption of its existence. Indirect evidence is of two kinds, namely, presumptions and inferences. A presumption is a deduction which the law expressly directs to be made from particular facts. Unless declared by law to be conclusive, it may be controverted by other evidence, direct or indirect. But, unless so controverted, the jury is bound to find according to the presumption.

An inference is a deduction which the reason of the jury draws from the facts proved. This must be founded upon a fact or facts as is warranted by a consideration of the usual propensities or passions of men, the particular propensities or passions of the persons whose act is in question, the course of the business or course of nature. The word "propensity" as used in this instructions means "natural or habitual inclination or tendency."

A fact proven to your satisfaction by proof of circumstances from a consideration of various items of indirect evidence, is nonetheless as effectively established as though it depended upon direct evidence. Such circumstances must be connected in such a way as to concur and lead directly to the conclusion which may be indicated thereby.

In every civil action, as this one is, the burden

is on the plaintiff to prove his case by a preponderance of the evidence. Preponderance of the evidence means the greater weight of the credible evidence as you find it to be. If, in your final estimate, this evidence is equally balanced as to the important facts, the plaintiffs will not have established such facts sufficiently. On the other hand, any preponderance of the evidence, however slight, in the plaintiffs' favor requires a verdict for the plaintiffs.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. The presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony, or by the evidence affecting his character for truth, honesty, or integrity or his motives; or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men and women. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to the parties, the manner in which he might be affected by the verdict, and the extent to which he is contradicted or corroborated by

other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury may distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony.

You must weigh and consider this case without regard to sympathy, prejudice, or passion for or against any party to the action. The attitude of the jurors at the outset of their deliberations is a matter of considerable importance. It is rarely productive of good for a juror, upon entering the jury room, to make emphatic expression of his opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his sense of pride may be aroused, and he may hesitate to recede from an announced position if and when shown that it is fallacious. Remember that you are not partisans or advocates in this matter but are judges. The final test of the quality of your service will lie in the verdict which you return to this courtroom, not in the opinions any of you may hold as you retire. Have in mind that you will make a definite contribution to efficient judicial administration if you arrive at a just and proper verdict in this case. To that end, the court would remind you that in your deliberations, in the jury room, there can be no triumph excepting the ascertainment and declaration of the truth. It is your duty as jurors to

consult with one another and to deliberate, with a view to reaching an agreement if you can do so without violence to your individual judgment. To each of you I would say that you must decide the case yourself but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced it is erroneous.

However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

You should not consider as evidence any statement of counsel made during the trial, unless such statement was made as an admission or stipulation conceding the existence of the fact or facts. And if I have said or done anything which has suggested to you that I am inclined to favor the claims or position of either party you will not suffer yourselves to be influenced by any such suggestion. I have not expressed nor intended to express, nor have I intimated nor intended to intimate, any opinion as to what witnesses are or are not worthy of credence; what facts are or are not established; or what inference should be drawn from the evidence adduced. If any expression of mine has

seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

At times throughout the trial the court has been called upon to pass upon the question of whether or not certain offered evidence might be properly admitted. With such rulings and the reasons for them you are not concerned. Whether offered evidence is admitted is purely a question of law, and from a ruling on such questions you are not to draw any inference as to what weight should be given the evidence, as to the credibility of a witness. In admitting evidence, to which an objection was made, the court did not determine what weight should be given to such evidence. As to any offer of evidence that was rejected by the court, you, of course, must not consider the same; as to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

If in these instructions any rule, direction, or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions as a whole and to regard each in the light of all the others.

The verdict to be rendered must represent the considered judgment of each juror.

In order to return a verdict it is necessary that

each juror agree thereto. Your verdict must be unanimous.

When you retire to the jury room to deliberate, you will select one of your number as foreman and he will sign your verdict for you when it has been agreed upon. You will then return into court with the verdict and your foreman will represent you as your spokesman in the further conduct of this case in this court.

For your convenience two forms of verdict have been prepared. One of the verdicts reads as follows:

“We, the jury in the above-entitled causes, find in favor of the plaintiffs, Flo Parker and Elgin Parker, and against the defendant in each cause.”

And the other one is judgment in favor of the Government.

The parties have stipulated that if there is judgment in favor of the plaintiffs the amounts will be calculated by them. Of course, if judgment is found in favor of the defendant, then the plaintiffs will take nothing, but in order to avoid the necessity of having you worry about figures and amounts counsel have very kindly agreed that such a verdict might be used.

Am I not correct, gentlemen?

Mr. Wilson: Yes, your Honor.

Mr. Garland: Yes, your Honor.

The Court: Now, ladies and gentlemen, it is your problem to determine the intent of the parties in this case as I have instructed you.

The bailiff will now be sworn.

* * *

Mr. Wilson: Thank you. I except to the omission of our requested instruction No. 24. [187]

The Court: An exception to the court's refusal to give plaintiffs' requested instruction 24 will be noted. I want to call your attention to the fact that everything requested in your instruction 24 was covered by the court's instruction. This instruction is argumentative in form and it emphasizes certain facts in this case which the court has purposely avoided doing.

Mr. Wilson: And No. A in the supplemental is the next one.

The Court: Exception noted. I considered that as being covered.

Mr. Wilson: And No. C, your Honor.

The Court: Exception noted.

Requested instruction L I gave in part.

Mr. Wilson: Only the first part, your Honor.

The Court: Yes, the last part I omitted, and an exception will be noted. [188]

* * *

Mr. Wilson: Then No. 31. I except to defendant's No. 31, your Honor, as applied to this case.

The Court: What is that instruction?

Mr. Wilson: The one starting:

“You are instructed that common understanding and experience are the touchstones for the interpretation of the revenue laws. The dominant purpose of the revenue laws is the taxation of income to those who earn or otherwise create the right to receive it and enjoy the benefit of it when paid. The one who earns income but gives the right to receive that income to a favorite child has enjoyed the benefit of that income within the meaning of the Internal [189] Revenue laws.”

I think that ignores the property element, the ownership of property, and the fact that the property can earn income.

The Court: I feel I covered that pretty well. I do not think I have unduly stressed the conflicting theories of either party. Exception will be noted.

* * *

The Court: Ladies and gentlemen, my attention has been called to an omission in one of my instructions which I thought the jury was aware of. Perhaps I was technically in error when I instructed you as to the net income of the partnership. That income amounted to \$264,553.92, and it was divided 25 per cent to Elgin Parker and 25 per cent to Flo Parker and 12½ per cent to

each of the aforesaid minor children; that Mr. Parker in addition to that received a salary of \$12,000.00 a year. You will recall the testimony in that respect. The testimony was that before there was any division of earnings a salary of \$12,000.00 per year was drawn by Mr. Parker.

Does that cover your point, counsel?

Mr. Wilson: And that he reported it in the returns for himself and wife.

The Court: I assume that he paid all his income tax.

Mr. Wilson: There is no doubt about it.

The Court: He undoubtedly paid a tax on the \$12,000.00 that he received. Does that cover your point, counsel?

Mr. Wilson: Yes, your Honor.

The Court: Ladies and gentlemen, you may now retire to the jury room.

(Whereupon the jury retired from the courtroom at 11:42 o'clock a.m.)

(At 4:10 o'clock p.m. the jury returned to the courtroom and the following proceedings were had in the presence and hearing of the jury.)

The Court: It is stipulated, gentlemen, the jurors are present and in the jury box?

Mr. Garland: So stipulated.

Mr. Wilson: Yes, so stipulated.

The Court: The bailiff has advised me that you desire to have some additional instructions.

Before I ask what questions you have in mind I wish to state to you that I am not interested and it wouldn't be proper for me to know how the jury stands as a whole or how any individual stands, so I want your questions to be general questions which will not indicate the present state of mind of any jurors.

Who is the foreman?

Juror E. Richard West: I am, sir. I think these questions are in accordance with your instructions.

The first question that we would like to know is, according to the federal law what constitutes a partnership and was the gift taken from the business and re-invested in the business considered a contribution to the welfare of the business?

The second question is, we would like to have you read, sir, in the instructions to the jury with regard to family partnerships. Will you please read the instructions to the jury with regard to

family partnerships—that part of the instructions that you gave us this morning?

The Court: One instruction that I read this morning was:

“A gift of an interest in a family business, whether absolute or in trust, which makes no real change in the economic situation of the group or in the control or management of the business will not reduce the obligations of the donor to account for and pay income tax on the earnings of the enterprise to the same extent as before the gift was made.”

Another one I gave is:

“The issue in this case is whether the partners, Elgin R. Parker and Flo Parker, really and truly intended that their four children would own an interest in the partnership assets and whether they intended that all six of them would join together for the purpose of carrying on the business and sharing in the profits and losses, as partners.”

The Supreme Court has defined a partnership as generally said to be created when persons join together their money, goods, labor, or skill, for the purpose of carrying on a trade, profession, or business, and where there is community of interest in the profits and losses.

And I gave you another instruction as follows:

“While partnerships between husbands and wives, or between parents and children, are always open to scrutiny, and to close scrutiny, such partnerships are lawful. There can be legal partnerships be-

tween husbands and wives and parents and children under California law.”

And another one I gave was:

“The fact that transfers to members of the family group may be mere camouflage does not, however, mean that they invariably are.”

And:

“There is no federal law that prohibits a family partnership or a partnership between parents and minor children.”

This case was tried before a jury and I tried my best to have the issues settled by the jury without giving any of my own viewpoints. I want to read to you again the instduction that I said represented the real issue, and that is:

“You must determine after considering all of the facts, including the agreement between these plaintiffs and their minor children, the conduct of the parties to that agreement in the execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contributions, the actual control of the income and the purposes for which it was used, and any other facts throwing light on the true intent of the parties to the agreement, whether those parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise known as Southern Heater Company.”

In other words, ladies and gentlemen, it is your problem to determine the intent of these people

when they set up this partnership. Did they intend to make a sham out of it for the purpose of avoiding income taxes or was it a real, genuine business partnership for the purpose of joining together in the present conduct of the enterprise known as Southern Heater Company?

Now, that is the question you have to answer. It is like any other question that you may have to answer. You have to take all the evidence together and look upon the whole picture and then determine was this a sham or was it a real partnership.

That is the question and I can't tell you how to answer it. I make it a practice not to express my own personal opinions in these matters and, as I have told you, I have not intended to express such opinion and I do not now intend to convey to you how I may feel about this case because that is your function. That is what you are here for.

I want to also call your attention to the fact, and not for the purpose of emphasis, but I want to call your attention not to overlook the fact that you have asked for certain instructions with reference to the findings of the commissioner as being presumptively correct. It is your burden to determine by a preponderance of the evidence whether the findings of the Commissioner were erroneous. Unless you can so find by the greater weight of the testimony, then it is your duty to find for the defendant. On the other hand, if you are convinced from all the testimony that the Commissioner was wrong, and by a preponderance of the evidence,

then you should bring in a verdict for the plaintiff. That is your problem and I cannot answer it for you.

I want to call your attention to the fact you have been out for a number of hours. It is getting pretty close to dinner time. When I go home for dinner I will not be available for at least an hour, and I assume it will take the others that long to again meet here.

After 5:00 o'clock the bailiff will provide food and shelter for you, if that is necessary, in order to arrive at a verdict in this case.

I want to call your attention to the fact again that you are sitting here as judges, free from any sympathy, prejudice or bias whatsoever. You will determine this case on the cold-blooded facts. Does the Government owe Mr. and Mrs. Parker this *morning* or doesn't it? That is the question. I hope you can answer it either yes or no and it will not be necessary to call in another jury and put all the parties to the expense they have been put to in trying this case.

If there is nothing further you may retire with the bailiff. If I don't hear from you by 5:00 o'clock, I hope I will hear from you later this evening.

The Foreman: Thank you, sir.

(Whereupon the jury retired from the courtroom and the following proceedings were had without the presence and hearing of the jury:)

The Court: Any exceptions?

Mr. Wilson: No.

Mr. Garland: No.

* * *

[Endorsed]: Filed March 28, 1950.

[Title of District Court and Causes.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 147, inclusive, contain the original Complaint; Answer; Demand for Jury Trial and Judgment on the Verdict in each of the above-entitled causes and the original Statement of Evidence; Plaintiffs' Requests to Charge; Plaintiffs' Supplemental Requests to Charge; Defendant's Requested Instructions Refused; Verdict of the Jury; Notice of Entry of Judgment; Notice of Appeal; Cash Bond on Appeal; Statement of Points Relied on on Appeal; Plaintiffs' Designation of Record on Appeal; Defendant's Designation of Record on Appeal and Motion and Order Extending Time for Filing Record on Appeal entitled in both of the above-entitled causes which, together with copy of Reporter's Transcript of Proceedings on January 10 and 11, 1950, and original Defendant's Exhibits A, B, C and D, transmitted herewith,

constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 11th day of April, A.D. 1950.

EDMUND L. SMITH,
Clerk.

[Seal]: By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 12520. United States Court of Appeals for the Ninth Circuit. Flo Parker and Elgin R. Parker, Appellants, vs. Harry C. Westover, Individually and as Collector of Internal Revenue for the Sixth District of California, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed April 12, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12520

ELGIN R. PARKER,

Appellant,

vs.

HARRY C. WESTOVER, Individually and as
Collector of Internal Revenue for the Sixth
District of California,

Appellee.

No. 12520

FLO PARKER,

Appellant,

vs.

HARRY C. WESTOVER, Individually and as
Collector of Internal Revenue for the Sixth
District of California,

Appellee.

DESIGNATION OF THE PARTS OF THE
RECORD NECESSARY FOR THE CON-
SIDERATION OF THE APPEAL

To the United States Court of Appeals for the
Ninth Circuit:

The appellants hereby designate the following
parts of the record necessary for the consideration
of the appeal:

1. Complaints.

2. Answers to Complaints.
3. Demands for Jury Trial.
- 4 Stipulation for the Consolidation of Cases for Trial.
5. Statement of the Evidence (together with the exhibits or parts of exhibits specified in said Statement of Evidence.)
6. Judge's Instructions to the Jury (Reporter's Transcript, page 170, line 1, to page 187, line 7, inclusive, and page 190, line 21, to page 197, line 10).
7. Appellants' Requested Instructions Nos. 24, A, C, L (pages 85, 100, 102 and 111, respectively, of the certified transcript).
8. Defendant's Requested Instruction No. 31.
9. Exceptions to the Judge's Instructions by the appellants (Reporter's Transcript, page 187, line 24 to page 188, line 17 and page 189, line 13 to page 190, line 7).
10. The Verdict of the Jury.
11. The Judgments Appealed From.
12. Notice by Clerk of Entry of Judgment.
13. Notices of Appeal with dates of filing.
- 4. The Designation as to Matters to be Included in the Record.
15. Designation of Points on Which Appellants Intend to Rely.

16. Cost Bond.

Clerk's Certificate.

Dated this 14th day of April, 1950.

/s/ MELVIN D. WILSON,
Attorney for Appellants.

To Ernest A. Tolin, United States Attorney; E. H. Mitchell and Edward R. McHale, Assistant United States Attorneys; Eugene Harpole and James D. Pettus, Special Attorneys; Bureau of Internal Revenue:

Please take notice that the foregoing Designation of the Parts of the Record Necessary for the Consideration of the Appeal is being filed forthwith in the above-entitled case.

/s/ MELVIN D. WILSON,
Counsel for Appellants.

Service acknowledged.

[Endorsed]: Filed April 24, 1950.

[Title of District Court and Cause.]

STATEMENT OF THE POINTS ON WHICH
APPELLANTS INTEND TO RELY

To the United States Court of Appeals for the
Ninth Circuit:

The appellants hereby adopt the Statement of
the Points on Which They Intend to Rely, which

was filed in the District Court, as their Statement of the Points on Which They Intend to Rely in this Court.

Dated April 14, 1950.

/s/ MELVIN D. WILSON,
Counsel for Appellants.

The appellee, Harry C. Westover, Collector for the Sixth District of California, through his attorneys, hereby accepts service of a copy of the foregoing Statement of the Points on Which Appellants Intend to Rely.

ERNEST A. TOLIN,
United States Attorney.

E. H. MITCHELL and
EDWARD R. McHALE,
Assistant United States
Attorneys.

EUGENE HARPOLE and
JAMES D. PETTUS,
Special Attorneys, Bureau
of Internal Revenue.

By/s/ EUGENE HARPOLE.

4/19/50